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COLONIAL ADMIRALTY JURISDICTION

- in -

THE SEVENTEENTH CENTURY

- by -

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THESIS submitted for the Degree of Ph.D. in
the University of London

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COLONIAL ADMIRALTY JURISDICTION

IN THE SEVENTEENTH CENTURY

CHAPTER I

INTRODUCTORY: THE PROBLEM AND THE MATERIALS

My attention was first drawn to the importance of the colonial admiralty courts seven years ago when I was engaged on a study of the judicial system of colonial Pennsylvania.¹⁾ In the course of this research it became apparent that the admiralty court of that colony was entirely different in character from the other courts of Common Law and Chancery. The admiralty court differed in jurisdiction; it differed in the nature of its law, but far more fundamental than either of these differences was its alien character, which set it apart from the judicial system of the colony. The admiralty court was no integral part of the colonial institutions; it was an incursion. Its officers were neither appointed nor dismissed by the colonial government, but by an English authority, nor could the colonial government control the admiralty court by legislation, for all laws affecting

1) The Moulding of the Pennsylvanian Judiciary. M.A. thesis. University of Wisconsin.

its jurisdiction or procedure were disallowed either by the proprietor or by the imperial government. Moreover Pennsylvania was joined with West Jersey and Maryland to form an unit for admiralty jurisdiction, and the judge of the court came under the authority of the governor of Maryland, the colony whose interests clashed particularly with Pennsylvania. Thus the admiralty court came to be hated far more bitterly than any other court in the colony. Bitter quarrels raged in the eighteenth century over the chancery jurisdiction of the colonial council, but the opposition to the admiralty court was far stronger.

It is hard to understand this hostility to the admiralty court. From early years Pennsylvania was a commercial colony, and Philadelphia soon became one of the chief ports of America. An admiralty court should have fulfilled a need in such a colony, and have been welcomed by the traders and sailors who did business together. Yet bitter hostility grew up as soon as the court began its work. This feeling was mainly due to the fact that the court was imposed on the colony, but it also arose from a dislike of the procedure of the court. Civil procedure does not use

trial by jury, and the colonists of Pennsylvania regarded trial by jury as one of the foundations of civil^c liberty.¹⁾

In addition the purpose of the British government in erecting the admiralty court ran counter to the economic intentions of the colonists. In spite of its procedure and its alien nature, the colonists might have accepted the admiralty court if its real work had not been the enforcement of the Acts of Trade. The prosperity of Philadelphia depended largely on smuggling and piracy, which Robert Quarry, the admiralty judge, tried in vain to suppress.

Thus consideration of the work of the admiralty court in Pennsylvania showed that the economic policy of the British government was closely connected with the system of colonial admiralty courts, and that without these courts the Acts of Trade could never have been enforced. The hostility felt in Pennsylvania towards the admiralty court took on a new significance in the light of this observation. If this hostility were in any way a contributing factor to the resistance which culminated in the revolt of the mainland colonies, then the colonial admiralty system became of im-

1) Being Quakers they had suffered under the Conventicle Act which set aside trial by jury. cf. The History of the Life of Thomas Ellwood, ed. C. G. Crump, p. 169.

perial importance. There was every indication that this was the case, so the problem of explaining the peculiar nature of the Pennsylvanian admiralty had to be re-stated in general terms for the whole empire. An examination of the nature of the Pennsylvanian court alone would not suffice; it became necessary to lay bare the origins and functions of the colonial admiralty system, and to discover, if possible, how that system was regarded throughout the empire.

Such an examination would involve a survey of the whole history of the empire, a task not to be completed in this country, since material only to be found in the United States and the West Indies would have to be consulted. There was, however, much to be done before this problem could be tackled, for no study had been made of the origins of the colonial vice-admiralty, and little was known even of the English vice-admiralty. The material for both these subjects was for the most part accessible in England, either in print or in the manuscripts of the British Museum, the Public Record Office and the Bodleian. An attempt has, therefore, been made in this monograph to show how the vice-

admiralty courts originated both in England and in the colonies, and how they developed in the seventeenth century.

It has been no easy task to find material for an account of the origins and development of the courts. The subject by its nature presents certain difficulties. The work of a court is most easily studied from the documents used in the cases heard there, but neither English nor colonial admiralty courts have left a great mass of records that can be consulted. Probably the archives of Jamaica are the richest, but they are not accessible even to students in that island, since they lie mouldering in a cellar. Even less has probably survived in the other island colonies, and what there is has neither been calendared nor published. Nor have the admiralty courts of the mainland left any more. The records of the court of New York are the fullest but these date only from 1715. ¹⁾ Maryland is the only other mainland colony known to have any surviving admiralty records, but there is only one volume of the late eighteenth century emanating from that court. ²⁾ Only the admiralty court

1) C. M. Hough, "Reports of Cases in the Vice Admiralty of New York and in the Court of Admiralty of the State of New York 1715-1788."

2) Now in the Library of Congress.

erected in Jamaica by Lord Windsor has left any records dating from the seventeenth century, and that apparently by chance. There is in the Public Record Office a precedent book compiled for a lawyer who practised in that court between 1662 and 1664. Possibly he was the registrar of the court, for he had entered proceedings of cases, letters of marque and other entries of the business transacted by the admiralty of Jamaica. England has almost as little as the colonies. Though every vice-admiralty was supposed to deposit every autumn a transcript of the year's business, only three volumes have survived. Two of these are fairly full, the third contains only a few entries. Generally the history of an institution can be compiled from the records of that institution, but in the case of vice-admiralty jurisdiction materials have to be sought elsewhere.

The difficulty of finding materials, has, however, not been so great as might have been expected in these circumstances. Many of the records of the colonial governments have already been published, and these have proved of considerable use in showing how the colonists met a need for

admiralty courts, long before they were established by the Lord Admiral. The publications of the Massachusetts Historical Society, the Prince Society and other learned bodies include the letters and papers of men who played a prominent part in the establishment of settlements across the Atlantic; those relating to Gorges, Mason and the Winthrops are especially valuable. Contemporary histories of the colonies, such as Winthrop's account of Massachusetts, throw light on the attitude of the colonists to the early experiments in admiralty jurisdiction. These sources are particularly valuable for the first half of the seventeenth century. After 1660 the Calendars of State Papers Colonial are full and become extremely useful; the first volume is inadequate but reference to the originals has failed to yield any return. In the post-restoration period cases came from the colonial admiralty courts to the Council of Trade and Plantations, so that these volumes contain much to supplement the single volume of cases heard in the court in Jamaica. Appeals do not, however, illustrate the normal working of a court, but deal mainly with abnormalities or

with miscarriages of justice. Such cases must be read with this fact in constant view, or else an impression of continual injustice is all that is gained. For certain periods of colonial history it is possible to supplement the State Papers Colonial from the manuscripts of the British Museum. The early history of prize jurisdiction in the West Indies would, for example, be far more obscure but for the papers of Colonel Doyley and the notes made by Edmund Long, which are now in that library.

These sources all throw light on what was happening in the colonies; the other side of the story concerns the administration which centred in England. It has not been any easier to discover how the Lord Admiral controlled his courts, than to trace the doings of those courts. There are but a few documents which have descended from the offices which carried on the administration. Some files of warrants and some entry books of patents and warrants are all that remain to show how vice-admiralty officers were appointed. The files of warrants are among the miscellanea of the records of the High Court of Admiralty now in the Public Record Office, but the Muniment Books, as the entry books of patents are called, are still kept in the Registry of the

High Court itself. In addition there are a couple of entry books of patents, warrants and out letters relating to vice-admiralty among the records of the Admiralty in the Public Record Office. A few accounts sent in by English and Irish vice-admirals survive also in the Miscellanea of the High Court of Admiralty papers. These are the only papers used in the administration of vice-admiralty jurisdiction which have survived, but a manuscript in the Admiralty Library is of great use in filling in the gaps. This manuscript is apparently a report drawn up as a result of a general enquiry into vice-admiralty jurisdiction, primarily in the colonies but also at home, and so contains much information and a few opinions.

It is difficult to estimate the importance of one class of material, searched with apparently little result. The Libels and Interrogatories of cases heard in the High Court of Admiralty of England might have been expected to yield results, but did not do so in proportion to the labour expended. The records of the High Court of Admiralty are very extensive; they are also in bad condition. Originally they were often badly written on paper with ink that

has altered with time. They have all been ill-kept, are dusty, crumpled and often carelessly filed, so that no one seems to have looked at them since a careless clerk tagged the open ends of the papers together and shut them away from view. As early as 1668¹⁾ the condition of the admiralty records was notorious, for in that year the Lord Admiral commanded Sir Leoline Jenkins, judge of the admiralty, to devote part of the summer vacation to supervising the proper storing and sorting of the records of the court. Jenkins took pains to do this, but unfortunately his care came too late, and there are many stained and damaged bundles of papers belonging to earlier years. The confusion of past years is only now being remedied at the Public Record Office, where the Miscellanea and Proceedings in Foreign Languages are being sorted, and it is still difficult to tell what a bundle is likely to contain and hard to find a particular document. The earliest known instructions to vice-admirals have crept into a bundle of Letters of Marque Bonds and there are many blank patent forms for vice-admirals belonging to Victoria's reign in one of the bundles of Miscellanea.

1) ²
Ad. 1755, Out Letters relating to Admiralty and Vice-Admiralty, ff. 20, 21.

It has been impossible under these conditions to make a systematic search through all the records of the High Court of Admiralty, but the greater part of the Miscellanea have been scanned. These contain much valuable material, unlike the Libels and Interrogatories, which are of little direct use. An examination of the files of the most promising years soon shows that the classes contain no appeals from the colonial courts to the High Court of Admiralty. Time spent on searching through these files was not really wasted. One or two significant cases have come to light and the work has justified itself also by supplying a drama of the methods and functions of an admiralty court, and by completing a conception of admiralty jurisdiction. This conception is essential for estimating the importance of the colonial admiralty courts which came in time to exercise a jurisdiction even more extensive than that of the High Court which sat in London. It has never been intended that this study should treat the history of colonial admiralty jurisdiction from a legal point of view, but to follow the struggles of civilians and common lawyers, and even the terms used in the admiralty courts has necessitated a

slight acquaintance with admiralty law. This acquaintance has been gained chiefly from contemporary law-books.

Crompton, Coke, Zouch and Malynes have all been called upon to help, and each in his way has proved useful. The first three wrote as lawyers for other lawyers, but Malynes wrote as a merchant for other merchants, and explained the use of admiralty courts and their powers to a practical reader.

His Lex Mercatoria has been extremely useful, particularly as it was an influential book and was quoted in at least two of the colonies.

Material gathered from such various sources is naturally heterogeneous, and the real difficulty in writing the history of colonial admiralty jurisdiction has proved to be not the collecting material, but its use, and the disentangling of anything coherent out of the apparently unconnected pieces of information. As the work of collection proceeded it became apparent that the history of admiralty jurisdiction falls naturally into three periods. The first, covering the sixteenth century, saw great developments in the power of the High Court of Admiralty, and the organisation of an English vice-admiralty system; the second, which ended about 1660, was one of decline in England and

experiment in the colonies; the third closed in 1697 with the completion of the system of colonial admiralty courts, whose existence was assumed in the Navigation Act of 1696. By the close of the seventeenth century the functions of these courts were fully developed, and it is possible to trace the beginning of colonial antagonism to admiralty jurisdiction. In planning this monograph these three periods have been kept in mind. Chapter II is devoted to a survey of admiralty jurisdiction in England and Ireland. Much is still to be discovered about the beginnings of Irish admiralty jurisdiction, but it is doubtful if the full story can ever be told; here the history of the Irish admiralty is used only so far as it throws light on the working of the colonial admiralty system. Ireland, it must be remembered, was a plantation, and though the Irish admiralty differed from the colonial system in many respects, yet the very differences are illuminating. This chapter deals not only with the sixteenth century, but also with the seventeenth century, since the weakness of the English admiralty was an important factor in the slow growth of the colonial. But But for the struggles of Common lawyers and Civilians the

colonies might have had their admiralty courts far sooner.

In dealing with the colonial admiralty in the early seventeenth century it has seemed better to follow a geographical plan, for the first fifty years of settlement overseas saw experiments and tentative beginnings which belong to particular regions rather than to the empire as a whole. Thus the next four chapters deal with the beginnings of admiralty jurisdiction in the fishery colonies of the North Atlantic, with commercial New England, Virginia and Maryland, and with Bermuda which was given over to wrecking. After the Restoration the control of the imperial government over the colonies became stronger, and the Lord Admiral was given specific authority over the dominions across the seas. A geographic plan does not therefore suit the history of admiralty jurisdiction after 1660, for geographic barriers do not count for so much in this period as before. The last chapters accordingly deal with the various activities of the colonial admirals and their courts. The history of prize and piracy is, however, so important that partly from motives of convenience it is divided into one chapter dealing especially with Jamaica and one with the rest of the

empire. This division is justified because it was in Jamaica that prize jurisdiction first became really important, and it was Jamaica that established precedents for the rest of the empire. The work of the admiralty courts in enforcing the Acts of Trade forms another chapter, showing the beginning of colonial antagonism which was to become so bitter in a very few years. Lastly the administration of the colonial admiralty and the machinery of appeals supplies the matter for the final chapter. So much sub-division seems, perhaps, excessive in such a short study, but it is suggested naturally by the history of the institution, and not arbitrarily by any considerations of greater convenience in writing.

CHAPTER II

THE ENGLISH VICE-ADMIRALTY SYSTEM.

Before approaching the main subject of this study, the development of colonial vice-admiralty courts, it is necessary to spend some little time in gaining a conception of the way in which admiralty jurisdiction was organised in England. Without some idea of the origin and scope of the powers of the lord admiral it is impossible to see how the institution of the vice-admirals of the coast was likely to arise in the plantations established across the Atlantic ocean. It is outside the scope of the main subject to enter into controversial subjects, or into the details of the various experiments which led in the sixteenth century to the establishment of vice-admiralty courts in the maritime countries, but something of the duties of both the Lord Admiral and of his deputies must be related. Of the admiral as a naval commander we need

not speak; of his duties in organising and equipping naval expeditions something must be said; it is the Admiral as an executive officer with the resulting judicial powers that is the present object of study.

The judicial powers of the Admirals of England can be traced back to the fourteenth century when the common law courts began to lose their power of exercising maritime jurisdiction, and the crown began to appoint commissions to deal with piracy or disputes originating below high-water mark. As the foreign trade of England grew and the revenue drawn by the crown from the customs became greater, it became increasingly important to deal effectively with sea-robbers and with the innumerable disputes that arose out of the universal custom of granting letters of marque by which aggrieved shipmen, often of little conscience, took reprisal for their losses. A royal official was the most suitable person to deal with such problems, and throughout the fourteenth century the Admirals became more and more important, and were used more and more

frequently on commissions to try pirates. Soon after 1340 their jurisdiction was well-established, for in that year by destroying the French fleet at Sluys Edward III made real his claim to be sovereign of the Narrow Seas.

At this time the command of the fleets of England was generally divided among three Admirals, the Northern Admiral in command of the fleet north of the Thames estuary, and the Southern and Western Admirals, who were responsible for the Channel coasts and Devon and Cornwall although sometimes only admirals for the North and South were appointed. The commissions issued to these Admirals often give them authority for one campaign only but sometimes they remained in office for longer. They had not only authority over the fleets under their command but also on shore where they had many duties connected with raising and equipping fleets, and consequently with controlling the merchant marine, upon whose ships the king largely depended for transports and auxiliary warships. The Admiral gave licenses for the departure of ships; he impressed men and ships for the royal expeditions; he made

inquisitions when ordered to by the king; he was in fact the king's executive officer on the coasts as well as naval commander. Thus after the battle of Sluys, when the king could back the Admiral with a supreme naval force, it was obvious that the Admiral was the proper official to deal with piracy, one of the chief causes of international dispute.¹⁾

In the first half of the fourteenth century the commerce of the Channel was plagued by pirates. Every harbour on the French and English coasts sent out ships that attacked the merchantmen of every nation. Safe-conducts were not respected, and the attempts made to provide convoys failed so that piracy was a cause of continual friction.²⁾

Reprisals proved useless and indeed pernicious for merchantmen failed to gain compensation from their guilty compatriots, and re-imbursed themselves by privateering in their turn, and the courts of common law failed to deal adequately with such cases of piracy.

1) Marsden, R.G., Select Pleas in the Court of Admiralty, vol.I, pp.xxiv, xxv, xxvi; Black Book of the Admiralty, vol. I, pp. 3-87 passim.

2) Cunningham, W., Growth of English Industry and Commerce 4th. ed., vol.I, pp. 301-304.

spoil and wreck, as came before them. After experimenting with trials before special commissions, trials before the Admiral and the Council, and trials at common law the disputes became so bitter that the king was obliged to pay compensation for the depredations of English pirates. In 1337 Edward III paid off the claims of the Flemish, Genoese and Venetian merchants for he needed their help in the struggle with France by land and sea. Such payments were only wrung from him by necessity and it became urgent to find some means of suppressing piracy, so that there should be no further occasion for similar claims. So the Admirals were made responsible for dealing with pirates, and sometime between 1340 and 1360 Admiralty Courts began to be held by deputies appointed for that purpose by the various Admirals. It is impossible to fix the exact year but the patent issued to Sir John Beauchamp, in 1360, gives him the right to hear pleas and to appoint a deputy if he is not personally able to hold a court.¹⁾ This last power is new, for his predecessors who held office in the same year were not given this right. Without it

1) Marsden, vol.I, p.xlii.

the Admiral must often have found it difficult to hold a court.

Sir John Beauchamp was the first man to be appointed to the command of all the fleets of England. In his hands was concentrated the control of the navies and he alone was responsible for the protection of the coasts, the administration of maritime justice, the collecting of royal dues on the coasts and the suppression of piracy. To his court came cases to do with all these branches of his activity, cases of obstruction of the fairway, quarrels over contracts made below high-water mark or across the sea, wreck and spoil, felonies committed on the high seas and within the ebb and flow of the sea, questions of flotsam and jetsam, and disputes over fishing rights. In fact the Admiral was the king's sheriff and justice on the coasts within the ebb and flow of the tide, and below the first bridges on tidal rivers and creeks.

The high-water mark was the limit of the jurisdiction of the common law, for the Admiral's court did not try cases by common law but by laws peculiar to sea-faring and mercantile people. The law merchant and sea law which

were used in Admiralty and Port courts were customary in origin and were the growth of many centuries. They contained many elements of civil law, so many in fact that the Admiralty courts came under the control of the civilian lawyers. Their international character and affinities to civil law made these systems of law popular with the public of the Admiralty court, which was partly foreign, but unpopular with the English, for under civil law no jury was required. Very early in the history of the Admiralty court this prejudice was shown, for in 1371 a petition was sent to Parliament complaining of a new court in which cases were being tried that had not been presented by a jury. This can only have been the Admiralty court. ¹⁾

But it was not only the litigants who disliked the Admiralty court, for it soon came into conflict with older courts and was accused of encroaching on established jurisdictions, especially in the case of boroughs. Often, as in the case of Padstow in 1383, it was the borough which was in the wrong but this did not make the Court of Admiralty any more popular. ²⁾ Moreover there were cases

1) Marsden, vol.I, p.xlvii; Rot. Parl. vol.II, p.308.

2) Marsden, vol.I, p.xlix, Hamely v. Alveston, Coram Rege 7 Ric.II rot. 51.

when the procedure of the new court did undoubtedly make possible malpractices. Under John, Earl of Huntingdon, who was rewarded by his half-brother Richard II for help against the Lords Appellants with the office of Lord High Admiral, the Admiralty officials were undoubtedly in bad odour. The complicated suit of Gernesey v Henton, with all the minor causes that arose out of it, shows this.¹⁾

About 1389 Gernesey sued Henton in the Admiralty court at Bridgewater for freight and the price of herrings purchased at sea. The case came before Thomer who claimed to be the Admiral's deputy, and judgement was given for Gernesey. Henton appealed to the Admiral denying Thomer's power to try the case. It was indeed proved that Thomer had no commission, but by this time the sentence had been executed. Hence arose a suit for trespass against the officer who had seized Henton's goods in execution of the sentence. This case was not settled by 1404, for it was possible to draw out proceedings by appeals, counter-appeals and all manner of writs. Finally the Council stepped in. In another case of the same period the judgement was delayed

1) Marsden, vol.1, pp.17-26.

because the Sub-Admiral, who took the depositions of one side, never handed them over to the Admiral's deputy who tried the case at Woolkey at Southwark. Such cases were bound to make the new court unpopular.¹⁾

Since the Admiralty court was hated for encroaching on the vested interests of boroughs, manors and royal courts, and because of its procedure, it is no wonder that Parliament was soon induced to limit its jurisdiction. The statutes of 13 Ric. II c 25 and 15 Ric. II c 3 define the jurisdiction of the Admiral, the first in general terms, but the second as lying within the ebb and flow of the tide of the sea and below first bridges on tidal and navigable rivers and creeks. These statutes inflicted no penalty for breach of their provisions, and apparently the Admiral ignored them completely for in 1400 a statute was passed adding as penalty double damages to the aggrieved and £10 to the king in every case wrongly sued in the Admiral's court.²⁾

These were the first experiments made in establishing

- 1) Marsden, vol. I. pp. 1-17, Sampson v. Curteys.
- 2) Ruffhead, Statutes at Large, 13 Ric. II c. 25, 15 Ric. II c. 3, 2 Hen. IV c. 11.

special courts to deal with maritime business, but they were not the last. The fifteenth century was a period of disturbance. Piracy had not been checked and the renewal of the war with France made the seas still more unsafe. Besides the pre-occupation of the French wars, dissensions at home weakened the government, and there is every probability that the work of the Admiralty courts was not carried out very efficiently. It was only during the reign of Henry V that the Channel was efficiently policed by the royal fleet, for early in the reign of Henry VI many of the royal ships were sold,¹⁾ and there is no doubt that the failure of the Lancastrians to keep the seas was largely responsible for the Yorkist sympathies of London and other leading ports. When the royal navy was inefficient, the power of the Admiral was correspondingly weak, and so it is that the organisation, which seemed to have been established under Edward III, failed to do the work for which it was intended.

Various expedients were resorted to in an effort to put down indiscriminate piracy but they were none of them

1) ed. Wm. Laird Clowes, The Royal Navy, vol.I, p.348.

very successful. Under the statute of 1414 the Admiral appointed officials called the Conservators of the Truces, whose business it was to keep a register of the shipping of the ports of England, to see that ship-masters observed letters of safe-conduct, and to report alleged cases of piracy.¹⁾ Any attempt to protect ships which sailed under a safe-conduct was bound to be unpopular, for reprisals were the best means by which a sufferer could recoup the losses he had received at the hands of a privateer. Moreover piracy was in the fifteenth century a respectable career. When the relations of the English government and continental powers were ill-defined it was easy for a captain to find excuses for seizing a foreign vessel, and when the conservators of the truces or other officials themselves owned pirate ships what shame could attach itself to those guilty of piracy?²⁾ Under pressure from merchants who disliked the statute of 1414 parliament suspended it from 1435 to 1451, when new legislation had to be passed because it was found that English

1) Marsden, vol.I, p.lii.

2) Kingsford, C.L., Prejudice and Promise in XV century England, pp.80, 81.

privateers had no respect for nationality and plundered English ships as freely as foreign merchantmen.

Under the statute of 1453 the Chancellor with one of the chief justices was given power to deal with cases of spoil committed on a foreigner by an Englishman¹⁾. This is the continuation of a parallel attempt to deal with such cases that had been going on ever since 1354, when a statute was passed making it possible for merchants to recover goods seized by pirates without suit at common law. This was designed to make the process of recovery easier. It would have been hard, in fact almost impossible, to recover by common law goods taken at sea. An action of trespass would seem the obvious way, but the fact that the trespass might have been committed on the high seas outside the realm would throw difficulties in the way of the plaintiff. As a result of the statute of 1354²⁾ merchants could take their cases before the chancery where such a difficulty did not arise. The procedure of the chancery further saved calling witnesses, for the court collected

1) Marsden, vol.I, p.lv.

2) 27 Ed.III st 2. c. 13; Marsden, vol.I, p.xl.

the evidence by a commission of inquiry; indeed in the fifteenth century all proceedings came to be done in writing. The drawbacks to proceedings in chancery were due to the slowness that came from the number of statements that each party could enter, and to the difficulty of executing the judgement of the court. But these drawbacks were not peculiar to the chancery; as we have seen admiralty procedure was also very slow, and if the Admiral were weak his sentences could not be executed. Admiralty procedure had, however, certain advantages over chancery procedure. In an admiralty court, where the character of civil law prevailed, it is possible to bring an action against either the person or the thing. This gave a plaintiff a double chance; if he could not catch the pirate, he could proceed against the ship if that could be found. Moreover if both the offender and his boat were in harbour, by arresting the ship the plaintiff could make sure of being able to distrain if he won the case, whereas by proceeding in Chancery he could only bring the case against a man¹⁾, who might divest himself of his

1) Baildon, W.P., Select Cases in Chancery, p.xiv.

property by collusive sales, before the judgement was given.¹⁾

But though the Chancery supplemented the Admiralty courts, it must not be thought that it supplanted them. During the fifteenth century the Admiralty courts continued to do some work on exactly the lines of the work done in the fourteenth century. The section of the Black Book of the Admiralty dealing with the tenure of office by John Holland, duke of Exeter, shows this.²⁾ If more Admiralty records had survived it would be clearer that the Admiralty courts did not cease to function, though it would also be clear that they were not capable of suppressing piracy. The spoil cases heard in Chancery, which Kingsford quotes in his essay on "West Country Piracy; the school of English Seamen", are all civil cases; there is no question of hanging pirates, only of securing restitution of spoils. Probably criminal proceedings against pirates remained in the hands of the Admiral, though the evidence of the preamble of the statute of 27 Hen VIII c.4 must be considered with care. Apparently,

1) Kingsford, p.96.

2) Black Book of the Admiralty, vol.I, pp.246-282.

however, the jurisdiction of the common law over pirates had fallen into disuse by 1429 for in that year a petition was sent to Parliament asking that the justices of the peace might deal with pirates and all who abetted them. The petition was not granted.¹⁾ This confirms the preamble of the statute of 1536, and leaves a clear impression that while civil cases arising out of piracy might come before Chancellor or Admiral, it was the Admiral who tried criminal cases of piracy.

But even after the accession of Edward IV, who did something to build up a royal navy and who made his brother, Richard of York, lord high admiral, piracy continued to ravage the Channel.²⁾ The foreign wars and the hostility of Brittany where Henry Tudor was sheltering probably favoured the pirates, and the growth of trade which came after 1461 tempted them to attack the profitable merchant ships.³⁾ With the reign of Henry VII begins a period of naval activity which was bound to re-act

1) Marsden, vol.I, p.liv.

2) ed. Wm. Laird Clowes, The Royal Navy, vol.I, pp.353, 354, 388.

3) ed. Wm. Laird Clowes, The Royal Navy, vol.I, pp.388-393.

on the judicial powers of the Admiral. Under him England began to take her share in the work of exploring the unknown parts of the world and developing new fields of commerce and new lands for settlement. The letters patent granted to Richard Warde and his companions in 1501, and to Hugh Eliot and his companions in 1502, both contain grants of monopolies of trade and the necessary admiralty powers to enforce these grants.¹⁾ At home by purchase, by capture and by building the king collected a navy which could give a sanction to the Admiralty courts.²⁾ This policy was only part of the general extension of royal power which marks the Tudor period. Henry VII and Henry VIII alike strove to make the royal writ effective with the result that the attempt to deal with piracy was renewed.

It was however not until the accession of Henry VIII that the government was free to tackle the problem. With the end of the Yorkist rebellions it was possible for England and France to come to terms; one of the first actions of Henry VIII was the renewal of a treaty with

1) ed. Bigger, H.P., Precursors of Cartier, 41-50, 70-80.

2) Ibid. pp.404,405.

France and the signing of a treaty with the same power dealing with the depredations of pirates.¹⁾ Both Louis XII and Henry VIII bound themselves not to protect pirates and to provide machinery for doing justice. Conservators of the truce were to be appointed to deal with offenders, and both kings agreed not to grant letters of reprisals so that the work of the judges might not be complicated by semi-official war. This treaty did not last for long, for the success of the French in Italy broke up the League of Cambrai and gave rise to the Holy Alliance, directed against the French. When Henry VIII joined this, war with France followed. As part of the general pacification that followed the end of the war the French ambassadors, sent over to conclude the marriage of Princess Mary and the Dauphin in 1518, drew up another and more elaborate treaty on the matter of depredations.²⁾ This treaty was intended to provide machinery to settle claims arising from cases of piracy, and to shorten litigation. Cases were to be brought before specially nominated commissions, meeting at

1) Rymer, Foedera, Hague ed., vol.VI,pt.I, pp.9-11, March 23, 1509/10.

2) Foedera, vol.VI, pt.I, pp.157-159, Tractatus de Depredationis.

London and Rouen. Any judge who refused to transfer a pending case within ten days was liable to fine of thirty silver marks. The English commission was to consist of the Admiral, the Vice-Admiral, or their deputies, and the Master of the Rolls. This court was to deliver final sentence within a year in all cases that should arise in the future, and in six months in suits already instituted. Its proceedings were to be "*summarie et de plano, sine strepitu et figura iudice*", a phrase which occurs in many of the later sixteenth century patents.¹⁾ In May 1519 a commission was issued to the Earl of Surrey, who was the Lord High Admiral, Christopher Middleton, his deputy, and Cuthbert Tunstall, the Master of the Rolls, ordering them to carry out the provisions of the treaty.

Surrey and Middleton had already been called on to deal with piracy; Middleton had been judge of the Admiralty court for some years, and in 1515 and 1516 commissions of oyer and terminer to deal with pirates²⁾ had been issued both to him and to Bateman, a doctor of laws. After the issue of the commission of 1519 writs were sent out to the sheriffs of half England to proclaim that any English

1) Foedera, vol. VI, pt. I, p. 177.

2) Letters and Papers of Henry VIII, vol. II, pt. I, no. 235.

merchant despoiled by Guyllan de la Fountain in the previous autumn should bring proof either before the Lord Cardinal or before the Master of the Rolls and Middleton, who would act as Wolsey's deputies, for Francis I had promised to make restitution.¹⁾

Peace however did not last for long. In spite of Wolsey's influence Henry VIII was soon at war again with France, with the usual result of privateering in the Channel. When peace was made in 1526 a treaty on depredations, almost identical with that of six years earlier, was drawn up.²⁾ This time the friendship with France was more lasting. The breach with the Papacy and consequent quarrel with Charles V following soon after, Henry could not afford to lose the support of Francis I. As piracy was a cause of frequent bickerings with France, it became even more urgent to provide effective means for its suppression.

Henry VIII had never relaxed his efforts to do this. That the Admiralty court had steadily grown in importance is shown by the existence of its regular records which be-

1) Ibid., vol.III, pt.I, no. 375.

2) Foedera, vol.VI, pt.II, pp.30,31.

gin in 1524. The following year Henry appointed his young son Henry Fitzroy, Duke of Richmond, to be Lord High Admiral.¹⁾ As the boy was too young to act, Viscount Lisle and the Duke of Norfolk were made his vice-admirals.²⁾ The patent of appointment is far fuller in its scope than any issued before. Richmond was appointed for life; all the usual profits were secured to him; he was given power to act through deputies, granting to them all the appropriate privileges; he was given jurisdiction in all civil cases arising within the ebb and flow of the tide, in murder and mayhem, over royal fleets and over wrecks; and he was to have all his powers "aliquibus statutis, actibus ordinationibus sive restrictionibus, in contrarium factis, editis, ordinatis, sive provisio, non obstantibus." ³⁾

This ample grant must have formed a portion of the work of reorganisation of the Admiralty court which was

1) Foedera, vol. VI, pt.II, p.19.

2) H.C.A., Acts 1 and 2.

3) Foedera, vol.VI, pt.II, p.19.

undertaken after the treaty of 1525 and carried still further as a result of the Reformation. In 1534 Parliament had to deal with the question of appeals from ecclesiastical courts, which hitherto had gone to Rome. The statute passed to settle this matter directed that appeals should be made "to the King's Majesty in the King's Court of Chancery; and that upon every such appeal, a Commission shall be directed under the Great seal to such persons as shall be named by the King's Highness, His Heirs or Successors, like as in the case of Appeal from the Admiral's Court to hear and definitively determine such appeals, and the Causes concerning the same....¹⁾" This shows that a procedure for appeals in Admiralty was already well-established, though it is impossible to say when it had come into being. Parliament was also called upon to alter procedure against pirates for since trial in the Admiralty Court was "after the course of the civil laws²⁾" convictions could rarely

1) Hen

1) 25 Hen.VIII c.19 s.4

2) 27 Hen.VIII c.4

be obtained. A prisoner could only be condemned on his own confession which could only be extorted by torture or on the testimony of independent witnesses, which could rarely be got, as the pirates usually killed any who could bear witness against them. Even if witnesses existed, they often could not be brought into court as they had sailed for distant parts, or if prevented from sailing it was expensive to keep them until the case should be heard. Parliament therefore directed that such cases were to be tried by common law by a Commission issued under the Great Seal to the Lord Admiral or his deputies and three or four "such other substantial persons as shall be named by the Lord Chancellor for the time being. "It was provided that benefit of clergy could not be pleaded in case of piracy. The jurisdiction of the Cinque Ports was safe-guarded by a clause, directing that the commission should be issued to the Lord Warden or his deputy instead of to the Lord Admiral in case of piracy committed within the jurisdiction of the Cinque Ports. Any gaps in this act were filled in by the

statute of the following year.¹⁾

Alongside this diplomatic and parliamentary work went the development of the administrative side of the Admiralty departments. The changes in the naval organisation are outside the scope of this essay, but it must always be remembered that increased activity and efficiency of the navy affected the judicial side of the Admiralty. The patent appointing the Duke of Richmond made wider claims on behalf of the Admiral than had ever been made before, and Henry VIII intended to enforce these claims. A new type of official was needed for this work and so arose the class of the vice-admirals of the coast. Though this name did not come into use until 1536, by that time the officers had already shaped their sphere of activity. There is among the Letters of Marque Bonds I a ²⁾ "List of Officers in the time of my lord of Richmond" ³⁾ with "the names of the Severall Comyssaries of the Counties adioyning upon the See Syd.". *the names of*

1) 28 HenVIII c. 15

2) H.C.A. Letters of Marque Bonds , bundle 1.

3) Ld. Admiral 1525 - 1536.

These commissaries soon became known as the vice-admirals of the coast. The same bundle contains other lists of early vice-admirals, drawn up for the Earl of Southampton¹⁾ and Lord William Howard²⁾. Here also is to be found the first of the long series of instructions issued from time to time to the vice-admirals³⁾. This list was issued by the direction of Lord Howard of Effingham, the Lord High Admiral under Queen Mary. It provides that every vice-admiral, who is not learned in the law, shall appoint as his deputy a resident in his circuit, trained in the law and preferably a civilian. He is "to proceed in matters of piracy and other offences according to the order of the Lawes," but he is not given jurisdiction over pirates; he is only to stay them. The deputy must hold quarterly sessions of general inquiry and general courts of judgement. He is also to hold common courts to try suits between party and party as need shall arise. These courts must all be held at convenient times and

1) Ld. Admiral 1536 - 1540.

2) " " 1553 - 1558 N.S.

3) H.C.A. Letters of Marque Bonds, bundle 1; H.C.A. Misc 586 f.44 and H.C.A. Misc. 409. contain other sets of instructions.

places, and in the presence of a registrar, who could keep the necessary records. There were to be three books of record, one of warrants and original actions, one of acts, constitutions, decrees and releases, and one of processes, verdicts given at inquests, and records of casualties belonging to the Admiral. The vice-admiral was also responsible for collecting all monies due to the King and Admiral, which accrued from flotsam, jetsom and lagon, from royal fish, deodands, and other casualties, as well as from the fines and fees taken in the court. For the honest performance of this work he had to give a bond to the Admiral when he took office.¹⁾

The experimental period had therefore practically shaped the practice and policy of the vice-admirals of the coast by the time of the issue of the first vice-admiral's patent in 1536. William Gonson who in that year was made vice-admiral for Norfolk and Suffolk had been closely connected with the admiralty for a long time. In 1512 he was a captain in the navy, in 1524 keeper of the storehouses at Erith and Deptford, and

1) H.C.A. misc 586 f. 55v.

soon after paymaster¹⁾, so that he was clearly a man of much practical experience and well-acquainted with the King's policy of re-organisation. It is interesting that the record of the proceedings in his court in Norfolk and Suffolk are among the very few vice-admiralty records that have survived. Considering that every registrar of a vice-admiralty court was supposed to furnish every Michaelmas to the High Court of Admiralty "a fair and true copy" of the volume, containing "the whole process and presentment of every court of enquiry, every verdict upon dead or murdered man in his circuit, all deodands, wracks, drifte, flotsam, lagon, jetsam, casual finds, amercements, mulcts, penalties, forfeitures, issues and other commodities touching the said office without concealment"²⁾, and considering that every maritime county had its vice-admiralty court, it is extraordinary that only Gonson's court of 1536, the court of Lancashire and Cheshire in 1635, 1636, 1639 - 42, and that of Essex in 1636³⁾ should have left registers that have come in proper course into

1)Oppenheim, M., The Administration of the Royal Navy, pp.81,84.

2)H.C.A misc. 586. f.56.

3)H.C.A. VA.proc. 104. H.C.A. misc 881. This last is too fragmentary to be of any real use.

the Public Record Office. Still from these and other scanty records it is possible to reconstruct the ordinary work of a vice-admiralty court in the sixteenth and seventeenth centuries, and to show that it altered but little during the century that elapsed after the appointment of Gonson.

As his patent¹⁾ directed, Gonson travelled round Norfolk and Suffolk holding his court in various towns, and calling before him a jury of twenty-four lawful men from the ports in the district. These juries made presentments of wrecks and other casualties that belonged to the Admiral, of dead men found in the district, of felonies, and of breaches of the customs regulating the fishing both in the North Sea and off Iceland. The court tried not only cases arising from these presentments, but also private suits; there were few of these last, for most men preferred to bring a case before the high court. Quite a number of the cases dealt with the Iceland or Shetland fishing; for instance the jury for Tysewell,

1) H.C.A.misc 489. no.63.

Thorpe, Aldborough and Orford presented a Dunwich master for flogging and abandon^ding in Iceland six sailors; they were brought home by another ship and their case came up again at Walberswick later in the year.¹⁾ At this later session Robert Botyll of Bod^dham was presented for assaulting Symond Whytby in Iseland "uppon Se Borde contrary to the kyngs peace and his lawes of the Sea", and John Conford was said to have "bete ii men of his maryners in Iseland this present yere."²⁾ When the court met at Lynne John Wyllys of Yarmouth appeared to depose that four of his crew of thirty-six had been left behind in Iceland, and had to give bail that he would appear at the next court. It was however not only cases of assault or desertion that interested the vice-admiralty court, for a jury presented a captain who imported Icelandic labour, probably in the hope of preventing competition.³⁾ Property also interested them, and thefts and damage of nets, lynes and other tackle, committed in Northern waters were presented.⁴⁾ Wreckage found at Iceland or Shetland

1) H.C.A. Examinations, Instance and Prize I. ff1,42.

2) Ibid. f42 v.

3) Ibid. f 24 v.

4) Ibid. ff 1, 3v, 40 v, 42 v. It is difficult to foliate this volume, because of insertions.

was also accounted for at Gonson's court just as if it had been found in English waters.¹⁾

All this work in connection with the fisheries in northern waters is of exactly the same nature as the business arising from events in home waters or on the coasts of Norfolk and Suffolke. The wainscotes rescued from a timber ship wrecked off Caister and annexed by Sir William Paston led to a case before Gonson.²⁾ There were cases of fouling of lines, inquests on dead bodies, proceedings against Kentish vessels that interloped in the herring fishery, presentments of fishermen who signed on for voyages to the Dogger bank and then deserted, and all the business arising out of the Admiral's rights to royal fish, flotsam and deadends.³⁾ In addition there are private cases such as that in which John Adamson sued Cecilia Hutchinson of Cromer for 20/ on account of a voyage to Iceland made on her behalf twenty-six years before. Had he waited for a local admiralty to be set up to prosecute his claim?

1) Ibid ff. 37v., 40v., 41v.

2) H.C.A. Examinations, Instance and Prize I.

3) Ibid. passim.

The records of the court of Lancashire and Cheshire show that the same system was still working, and that much the same business was being done. There are no presentments of happenings in the northern fisheries, but then neither Chester nor Liverpool were ports from which the fishing fleets sailed; the business done at Chester, Liverpool and Preston, where the court met, was purely local. During the previous century the procedure had altered but little. The court was proclaimed in the same way; the chief constables brought in their warrants and the lists of the inferior constables to whom warrants had been sent; the jurors were summoned and impanelled just as in Gonson's court a hundred years before.¹⁾ The most apparent difference is that the register is perhaps more methodically arranged. The constables and their warrants are listed first, the juries next, and then the business, whereas in the earlier volume the constables appear and disappear like Jacks-in-the-box instead of being marshalled in companies. A little further investigation, however, reveals that this is unimportant, and does not affect the real business of the court. The difference that is of

1) H.C.A. Vice Admiralty proceedings, 104, ff 4 v, 5, 5 v.

weight is to be found in the type of work. Gonson's court had transacted business of a more varied nature; the Lancashire and Cheshire court was concerned almost solely with coastal fisheries, which were not comparable with the North Sea fisheries. Jury after jury presented and fined men for having weirs in the Dee, using rakes and other illegal means of taking fish, destroying fry, fishing on the Sabbath, and cutting the lines of other fishermen. This took up most of the time; the rest went in punishing those who emptied ballast or "muck" into the fairway, or who drove their carts across ships' cables.¹⁾ There is little about wreck, though in the October of 1636 a case began between the Lord Admiral and Thomas Danson who was accused of taking royal fish and detaining wreck. He pleaded a commission as water-bailiff for the liberties of Furness from the Duchy of Lancaster, but what the conclusion of the case was is nowhere recorded.²⁾ Nor did any civil cases come before the court, but this was probably because there was no

1) H.C.A. Vice Admiralty proceedings, 104. passim.

2) Ibid. f. 33.

great trading centre in Lancashire and Cheshire,¹⁾ as in Norfolk and Suffolk, where Yarmouth was only chief among several flourishing ports.

The volume of business done in any vice-admiralty varied considerably from year to year, for much of both the work and the profits of the court depended on such casualties as wrecks. The remaining accounts sent in at Michaelmas by the vice-admirals are important for two reasons. They show not only the fluctuations of the profits of a vice-admiralty but also the connection between the Irish vice-admiralties and the English High Court of Admiralty. English and Irish accounts are indiscriminately mixed, showing that in the seventeenth century Irish vice-admirals had to account at London and not at Dublin. This is important for the plantations of Ireland might easily have resulted in a separate vice-admiralty system fore-shadowing that later established by James Duke of York. In England and Ireland alike however the accounts show that one year a considerable

1) Chester was the chief port, but in the seventeenth century its traffic was mainly with Ireland and in passengers not goods.

sum might be due, and that next year there was no profit, or even more likely that the vice-admiral was himself out of pocket. The vice-admiral often transacted business for the admiralty, fitting out ships or paying for victualling, and these sums were set against the monies taken in the vice-admiralty.¹⁾ For the period 8 Dec 1623 to 17 Dec 1624 Francis Bassett, vice-admiral of North Cornwall declared that he had received £486¹. 0 . 0 and had spent £163 . 9 . 4 ; of the £322 . 10 . 8 remaining he owed to the Lord Admiral £161 . 5 . 4.²⁾ In the Autumn of 1634 he made another return for the period since 18 Feb 1632. This was remiss of him for in 1631 particular instructions had been issued to all vice-admirals to send in their accounts punctually every Michaelmas. After Buckingham's death the Admiralty commission tried very hard to collect every penny they could, for the king was in financial straits and the sums due from the vice-admirals of the coast were sorely needed. Yet Bassett delayed two Michaelmasses in making his re-

1) H.C.A. misc. 158, Sir John Eliot's accounts, 1624/5.

2) Ibid.

turn, and then returned far less than in 1624. He declared that of the £96 .06.10 he had taken, only £38.16.07 was clear profit, and so returned £19.08.03½ as the dues of the Lord Admiral.¹⁾ Similar fluctuations can be noticed in all the returns of the vice-admirals. In 1622/4 Sir John Eliot returned for Devon £224.16.11, but for 1624/5 only £54.15.06, a considerable drop even though it was the garnering of a shorter period. In Ireland it was the same story, even when Wentworth was tightening up the vice-admiralty administration by getting himself or his relatives made vice-admirals in almost all the districts.²⁾ In 1628 - 30 Munster returned £166.08. 1½, but in 1636/7 only £36.10. 0. Often a vice-admiral simply sent a note stating that there were no profits³⁾ but Sir Lionel Tellemache vice-admiral of Suffolk in reply to the instructions about accounts issued in 1631 sent in a beautifully drawn balance sheet in which all the figures were noughts.

1) Ibid.

2) H.C.A.misc. 158.

3) Ibid. Ulster, 1630, 1634. Leinster, 1623, Connaught, 1629, Cornwall, 1666, 1671, 1672, 1774, 1675, 1677. This was probably due to the decline in the power of the admiralty court.

The profits came of course from many sources; part was the result of fines and fees; part came from the sale of flotsam, deodands or royal fish, as for instance the 39/- paid in by George St. George for Connaught in 1632 which was the result of a sale of train oil made from a stranded whale. The big sums were however derived from the sale of wrecks or pirates' ships and goods. There seems to have been an established business of salving wrecks for included among the returns of the vice-admirals is a detailed account of the expenses incurred in making salvage of a wreck near Pakefield and Lowestoft by Solomon Smith, who spent forty-five days at the work. As he realised nearly nine hundred pounds for the Lord Admiral and only charged £51.10 for himself, his man, carting and storing the goods, and feeding the commissioners sent to appraise the wreck, he cannot have found salving a paying occupation. The Customs did however for they took £358.04.05 out of the gross profits. Generally however a wreck was salvaged by local seamen, and the salvors got half the profits as their due. The same practice was used with royal fish, flotsam and jetsam.

While the salvors shared in the profits of the casualties they helped to save, the officers of the vice-admiralty court did not always get a share. The rules and orders issued in May 1635 to the vice-admirals expressly laid down that "all considerable droicts, and Admiralty Casualties whether Treasure Trove, Fishes Royall, Ambergreece, or any other perquisite of the Admiralty, found in the sea or cast out of the same shall be recorded in the High Court of the Admiralty, and there legally confiscated and adjudged to his Majesty, or the Lord ~~High~~ Admirall for the time being". The judge, registrar and marshal were to be paid out of the "amerciements and profitts" of the court, the judge taking one half, and the registrar and marshall dividing the other half equally between them.¹⁾ A note in the margin of this draft states emphatically that this allowance is too small, and that it used to be larger. In Suffolk in 1631 it must have been indeed small for there were no profits. Though the proportion of the shares in the profits varied from time to time the principle re-

1) H.C.A. misc. 409. para. 14.

mained the same, and the high court kept a watch against extortion by requiring a return of the fines and fees exacted by the officers, whose income depended on their severity. These returns must have been sent in separately, for they are not included in the general accounts. But though the judge, marshall and registrar must often have received but little, a vice-admiralty court was nevertheless often a profitable source of income, and the judges of the high court customarily held the vice-admiralty of Essex in order to supplement their income. Sir Julius Caesar was however the last to do this. It was possibly because the income was so small and temptation therefore stronger that all vice-admirals had to give a bond that they would perform their duties faithfully.¹⁾ In spite of this bond there were complaints that many of the vice-admirals of the coast were in league with pirates.

In the first part of the seventeenth century this system was in full swing, but the growth of the admiralty courts had raised up enemies, just as in the reign of Richard II. The common lawyers attacked the civilians,

1) H.C.A. misc. 586, f56.

whose stronghold was in Doctors Commons and the admiralty court, and accused them of usurping jurisdictions and claiming the right to hear cases which had originated in the body of a county. During the Tudor period these conflicts were smoothed over, sometimes by the intervention of the sovereign.¹⁾ Under James I the quarrels became still more bitter for the king identified himself with the civil law, which supported the autocratic power of the crown, and even took his place once on the admiralty bench. Thus the struggle of king and parliament had its effect on the admiralty courts, and the great lawyers of the common and civil law ranged themselves on opposite sides. Caesar was one of the most useful supporters of James I, and his opponent Coke is of course well-known for the aid he gave the parliamentary party. The triumph of the parliamentarians meant the curtailment of the admiralty jurisdiction, so that after 1660 little but prize cases came before the admiralty judges. Pepys indeed found the court drawing out two unimportant cases to a great length by spending much time in dining.²⁾

- 1) An agreement was made in 1575 between judges of Admiralty and King's bench
- 2) ed. Wheatley, H.B., Diary of Samuel Pepys, vol.III, pp.64,65.

The main points of conflict which are set out in the Fourth part of Coke's Institutes are of course mainly technical, but it is worth noticing them briefly and also paying some small attention to the answers made to them by writers who were civilians. Since Coke sums up the points of controversy it is possible to use works written during the struggle but published both before and after the Institutes. The chief writers who stated the admiralty position are Richard Crompton, who presented his book to Sir Julius Caesar, Zouch, Molloy, and Gerard Malynes, who is not concerned with stating a case for the admiralty but in giving practical advice to the business man. Coke followed the plan of stating the objections made by the admiralty lawyers to the practice of the common law courts, which were continually issuing writs of prohibition, supersedeas etc. and transferring cases from the admiralty court to King's Bench or Common Pleas. According to Coke the statutes of Richard II's reign did not give the Admiral jurisdiction except on the high seas, and on "great ships" lying below the "points" in tidal rivers in case of murder or mayhem. He maintained that

the body of a county extended in many cases over water and so claimed for the common law jurisdiction over wreck, which in his view should be tried by a jury at common law. Contracts and charter-parties were also claimed for the common law on the grounds that they were made within the body of a county even if they were to be performed at sea. ~~Even in the case~~ Even in the case of contracts to be performed in a foreign contract the admiral was forbidden to act, for these belonged to the court of the constable or marshal. Coke also denied that the admiralty court was a court of record which it had certainly been in the early days of its existence. He proved this by stating that in case of an erroneous sentence no remedy could be had by a writ of error, and proceedings must be instituted before the court of delegates. Finally he accused the admiralty lawyers of using the "non obstante" clause of the Lord Admiral's patent to extend their jurisdiction in order to fill their pockets with fees.¹⁾ It is impossible not to convict Coke of malice in his attack on the Admiralty

1) Coke, Sir Edward, The Fourth Part of the Institutes of the Laws of England concerning the Jurisdiction of Courts, (1644), pp.134 - 137.

court. Encroachments there may have been, but the Admiralty court was not an instrument of autocracy, even if its judges were supporters of the crown, and the distorted proofs which Coke had to put forward show that he had no case. As Zouch maintains in his "Jurisdiction of Admiralty of England" Coke's statement about the "points of rivers limiting the Admiral's jurisdiction is senseless, and suggests that "points" is a misreading for "ponte".¹⁾ A little less wilful blindness might have suggested this reading to Coke. Moreover Coke confesses to the custom of the common lawyers of calling before them cases of contracts made on shipboard on the supposition that they were made in the ward of Chepe.²⁾ While Coke mis-reads his statutes and confesses openly to using fictions in his courts, the admiralty writers state the powers of the Admiral from his patents and from the statutes dealing with the admiralty, piracy or assurance,³⁾ and the account they give is born out by the history of

1) Zouch, R., The Jurisdiction of the Admiralty of England asserted against Sir Edward Coke's Articuli Admiraltatis, (1663), p.85.

2) Coke's Institutes, pt.IV, p.134.

3) Under 43 Eliz. C.12. this was tried by commissioners of whom the judge of the Admiralty court was one. Molloy, C., De Iure Maritimo et Navali, (1690), pp. 260, 261.

the court.

The jurisdiction of the Admiral was in the seventeenth century as in the fourteenth over "the Seas, or publique Rivers or fresh waters, streams, Havens or places subject to overflowing, whatsoever, within the flowing and ebbing of the Sea, upon the Shoares and Banks whatsoever adjoining to them, or either of them, from any the said first Bridges whatsoever, towards the Sea, throughout our Kingdoms of England and Ireland, or our Dominions aforesaid or elsewhere, beyond the Seas..."¹⁾ Within these limits the Admiral's courts should deal with all civil and criminal cases.

The importance of this controversy in the history of the vice-admiralty courts of the colonies is that the identification of admiralty jurisdiction with the king's party in the minds of the puritans was bound to affect the development of vice-admiralty jurisdiction in the new dominions. A tendency to dislike the admiralty courts might be present, though dormant, in the minds of colonists, and might easily colour their attitude to those who attempted to organise such courts, just as in

1) Zouch, R., Jurisdiction of the Admiralty of England asserted (1663), pp. 21, 22. quoting from Selden, J., Mare Clausum.

Pennsylvania the Quaker colonists particularly disliked the chancery courts because they had suffered so much under the Chancery of England.

The admiralty courts of England had by the seventeenth century proved their usefulness, grown to strength, and were being attacked for their vigorous existence. No one interested in trade, fishery, or administration of coastal activities could ignore them, and because of the connection of the vice-admiralty system with these matters no one could fail to see that such a system might be extremely useful as a means of organising and controlling trade in the plantations. Having proved their use in England, the vice-admiralty courts, along with other institutions, were ready for transplantation across the Atlantic.

CHAPTER III.

THE COLONIAL PROMOTERS AND VICE-ADMIRALTY JURISDICTION.

The first half of the seventeenth century saw the beginning of a wave of emigration from England which resulted in the development of settlements in Newfoundland, in North America and in the West Indies. The settlers took with them to their new homes the ideas of law and administration which were their natural inheritance, with the result that, even though new surroundings or personal wishes were potent in developing the institutions of the new settlements, England's law and her constitution were the foundation. As we have seen the admiralty courts were not peculiarly English for much of admiralty law was derived from foreign sources, yet since they were some two centuries old at the time of this westward movement, it is only reasonable to expect that the admiralty courts should migrate along with the jury system

and the common law courts. It is this migration that must now be traced.

The first work of a new settlement is concerned with the need of food and shelter; for niceties of law there is no time. In a young community justice is of necessity often rude and ready, though the experience of the settlers soon led to the development of a simplified system based on English law. But admiralty courts are highly specialised and are concerned only with maritime affairs, so that as long as a colony had little trade there was no need for an admiralty court. From the point of view of the settler the ordinary court, usually the council, was all that was necessary. If the admiralty courts had been left to develop naturally in the colonies, they would only have appeared as the growth of trade warranted. Quite early, however, in the seventeenth century vice-admiralty courts are mentioned in connection with the colonies. Sir Richard Whitbourne refers to one in Newfoundland in 1615; Gorges speaks of a vice-admiral on the North American coast in 1622, and men like Captain John Smith, Argall and Captain Mason are spoken of as Admirals. The explanation of this contradiction

is to be found chiefly in the history of that group of men of whom Sir Ferdinando Gorges was one of the most important.

The expansion of England was largely due to the efforts of this group which was composed of men drawn from the landed classes, of merchants and of sea-captains who had gained experience in the expeditions of Elizabeth's reign. Either as individuals or as members of a company these men had received charters granting them land and sea within certain limits, the power to organise a government and exercise jurisdiction within these limits, and the right to control the trade and fisheries of the plantation. It was the period of the great struggle between the Stuart kings and the United Provinces over the North Sea fisheries, and everyone was familiar with the attempts of the British government to compel the Dutch to buy licenses to fish for herring in the North Sea; they knew of the expedition under the command of Captain John Mason to collect the white penny from the fishermen of the west coast of Scotland; they were acquainted with the arguments of Selden, who in *Mare*

Clauson, argued that the sovereignty of of the British king extended from the shores of the British Isles uninterruptedly to the coasts ruled by other sovereigns.¹⁾ Though Selden did not discuss the question of British sovereignty over the North Atlantic, by making grants of these waters the crown tacitly assumed sovereignty there. The colonial patentees then received grants of jurisdiction and territory which had to be turned into a source of profit. In an age when fisheries were a favourite speculation and the North Atlantic was already frequented by ships of several nations, considerable interest was taken in the grants of sole fishing rights and jurisdiction by sea as well as by land.

Out of these grants grew the attempts to establish vice-admiralty courts in the colonies, for a court which administered sea-law was most capable of enforcing fishing rights and of protecting a trade monopoly. It was natural that those who were interested in colonial projects should aim at doing this, for in all probability they had personal knowledge of the work of the vice-

1) Selden argues only in the case of the "four seas" surrounding Great Britain.

admirals of the coast. Many of the vice-admirals were drawn from the nobility and gentry, while the merchants and sailors had professional experience of the usefulness of admiralty courts. But besides assuming a general knowledge, it is possible to assume a special knowledge on the part of a few of these men. Sir Ferdinando Gorges, for instance, must have worked with the vice-admirals of South Devon and Cornwall and may himself have exercised vice-admiralty powers. He had been interested in the colonisation of North America ever since 1605, when Weymouth gave him two Red Indians, and was the moving spirit in the renaissance of the North Virginia Company as the Company of New England, helping to obtain the charter of 1619, which contained a grant of admiralty jurisdiction.¹ For some years Gorges was commander of Plymouth, where he must have come into contact with the officers of the admiralty court for he had a considerable knowledge of the damage done to English merchant and fishing vessels by pirates, and in 1611 himself forwarded to Salisbury the report of examinations of merchants, who had been set on

1) Farnham, H.F., Documents relating to Territorial History of Maine, vol. I, p. 32.

by pirates.¹⁾ This certainly looks as if he had exercised vice-admiralty powers as commander of Plymouth. In 1617 Gorges was very active in trying to get the Western Ports to join with London in raising a fund to equip a fleet to sail against the pirates, but the Western Ports hung back, and their reluctance sprang in part from their dislike of Gorges. John Mason also had some knowledge of maritime administration; he had worked for some years in a commercial house in London and had been sent in 1610 in command of a small expedition to the Håbrides, where James VI was trying to regulate the fisheries. In 1615 he was appointed to succeed Guy as governor of Newfoundland. As a merchant, as a commander of the expedition of 1610, and as governor of Newfoundland, the centre of the north Atlantic fisheries, Mason must have needed and acquired a working knowledge of admiralty law and procedure. Two others of the councillors of the reconstructed company of New England were acting as vice-admirals at this time, the

1) Baxter, J.P., Sir Ferdinando Gorges and his Province of Maine, vol. III, p.171.

Earl of Warwick who had been made vice-admiral of Essex in January 1619¹⁾, and the Earl of Pembroke, who was appointed to South Wales a few months later.²⁾ It is therefore not surprising to find that such men were engaged in trying to set up vice-admiralty courts in their plantations with a view to enforcing their monopolies over trade and fishing.

The earliest attempt to set up a vice-admiralty court was made in 1615 in Newfoundland where disorders among the fishermen were very common. The English had been fishing in these waters for about a century and had evolved their own customs; by them the first ship to arrive in a bay was reckoned the admiral, the second the vice-admiral, and the third the rear-admiral. The terms were borrowed not from the royal navy but from ordinary mercantile practice, where the chief of even a couple of small vessels was always known as the admiral. In Newfoundland the position of admiral carried certain privileges, such as the right to occupy a double share

1) H.C.A. misc. 820.

2) H.C.A. misc 820.

of the drying beaches. It also carried with it the responsibility of dealing out rough and ready justice according to the customs of fisher folk, and there must have been considerable work to do, judging by the disputes over the foreshore and drying grounds, that Gilbert found raging in 1883.

As long as Newfoundland was unoccupied this system worked, but when settlements began to grow up here and there friction at once followed between the colonists who wanted to conserve the timber and till the soil, and the fishermen who looked upon the island, its forests and its game, as their property. The fishermen used the woods wastefully. They cut down trees for fuel and for building sheds and drying stages. At the end of the season these were set alight, often carelessly so that forest fires resulted. In consequence, the coasts near the fishing stations were gradually deforested and the fishermen encroached on the settlements for their timber. Carelessness in unloading ballast in the harbours and fairways was another source of annoyance to the settlers; and finally the fishing vessels smug-

gled away discontented colonists or servants to the anger of the governor. Attempts were made in 1611 to draw up regulations for the fishermen¹⁾ but they doubtless paid little heed. Guy was commanded at Cupar's Cove, could do little or nothing against the numerous shipmen who resented the presence of settlers. The only chance of enforcing his regulations was through the authority of the crown. In 1613 Mason, who had been used to collect the royal dues from the fishing fleet on the west of Scotland, became governor of Guy's plantation in Newfoundland. It is significant that in the same year Sir Richard Whitbourne set sail from Exeter for Newfoundland armed with a commission from the High Court of Admiralty to hold a vice-admiralty court. He arrived in the middle of the fishing season and tried to carry out his instructions "to impanell Iuries, and to make inquiry upon oath of sundry abuses and disorders committed amongst Fishermen yeerly upon that Coast." He held his first court in the "Bay of Trinity", and afterwards visited other harbours.²⁾ In each he summoned the masters of

1) Cal. St. Pap. Col., Am. and W.I. 1574-1660, no. 40. 1. Guy's laws 1611.

2) Whitbourne, R., Discourse and Discovery of Newfoundland, (1622) ff. 63, 64.

the ships to attend and to make presentments of offences. These were of all kinds, sabbath-breaking, fouling of fairways with ballast, burning of woods and stages, and using foreign vessels in the fisheries. Whitbourne drafted regulations to deal with such offences, and managed to collect the seals or marks of a hundred and seventy shipmasters to the presentments returned to the Admiralty. He also collected a small amount of flotsam as belonging to the Lord High Admiral.¹⁾ His account of this work in the "Discourse and Discovery of Newfoundland" is written very magniloquently, but in reality Whitbourne achieved very little. He was only in Newfoundland for three months. No further attempt was made by the government to enforce the regulations by sending out a vice-admiral. Whitbourne's motive in writing the Discourse is sufficient to explain the magnificence of the account. He was naturally enthusiastic about Newfoundland, having voyaged there often since he had been there with Gilbert and seen him take possession of the island, but he was when the Discourse came out in

1) Discourse and Discovery of Newfoundland, f.64.

1622 in need of money, and hoped by painting his deserts in bright colours to get some remuneration. The Council granted him a collection in the churches one Sunday.¹⁾ But though Whitbourne did not succeed in establishing a permanent vice-admiralty jurisdiction, his mission was sufficiently effective to be a cause of bitter complaint when the quarrel between the Western Ports of England which were interested in the North American fisheries, and the Company of New England and the Newfoundland settlers led by Guy and Calvert came to a head. In 1618 the Western Ports, Barnstable, Dartmouth, Bristol and Plymouth being the chief, sent a petition to the Council in which they complained of the planters, that they had summoned a court of Admiralty at the busiest time of the fishing season, and had collected fines of fish and train oil from all who did not appear. This the planters disclaimed but probably it was their influence which had brought Whitbourne out, and it was to his court of 1615 that the Western Ports referred.²⁾ The Council ordered

St. Pap. Am. and W.I.

- 1) Cal. Col. 1574-1660, 82. Acts of the Privy Council, Colonial Series, I, pp. 29, 38.
- 1) Cal. St. Pap. Col. Am. and W.I., 1574-1660, p. 82; Acts of the Privy Council, Colonial Series, 1613-1660, pp. 29, 38.
- 2) Cal. St. Pap. Col. Am. and W.I., 1574-1660, no. 39.

that no governor should interfere in the fisheries.¹⁾

The British fisheries were however a matter of national importance, and a subject of national interest. The struggle with the Dutch over the North Sea fisheries, the numerous schemes that were in the air for extending the fisheries, and the importance of the fishing population to the royal navy, all combined to arouse great interest in anything which touched the fisheries, and the western ports were able to carry their attack further.

The cause of the renewed attack in 1621 was the revival of the North Virginia Company as the Company of New England. This was largely due to the efforts of Sir Ferdinando Gorges who succeeded in obtaining a charter granting exclusive fishing rights on the coast of North America between the 40th and 48th degrees of latitude and admiralty jurisdiction to enforce these rights. It was the practice of the day to appoint an admiral to look after such matters.²⁾ The duties of an admiral of a colony were neither those of a fishing nor of a naval admiral. He was responsible for the company's ships

Series

1) Acts of Privy Council, Colonial, 1613-1680, p. 22.

2) E.g. Sir Samuel Argall was admiral of Virginia.

which conducted the trade between England and the plantation; it was his duty to prevent interlopers in trade or fishing; he had to protect the colony from pirates; and in some cases he was responsible for collecting licenses from the fishermen frequenting the private waters under his control. Here lay the trouble. Patents often gave a monopoly of fishing in territorial waters, sometimes as in the case of the New England Company, as far out as a hundred miles from shore.¹⁾ The fishermen who frequented the coasts of North America long before the days of colonisation resented this, and the business men at their back were ready to fight. In 154⁸/₉ as a result of an earlier struggle between fishermen and vice-admirals a statute had been passed forbidding Admiralty officials to take dues in money or fish from those fishing in Iceland, Newfoundland or Ireland under penalty of heavy fine.²⁾ This gave a decided advantage to the Western Ports in the renewed struggle with the colonial promoters.

Alarmed by the grant of the charter to the Company of New England, the western ports used their influence to

1) Documents, Maine, vol. I, p. 32.

2) 2nd and 3rd Edw VI, c 6.

get a bill for free fishing brought before the House of Commons. This is not the place to recount the details of the struggle over the fishing rights of the New England Company, but it is impossible to avoid telling some part of the story, for Mr. Neale who spoke for the bill, complained bitterly of Whitbourne's court, while Secretary Calvert who was himself a patentee in Newfoundland put the settler's point of view. Neale objected to the vice-admiralty court on practical as well as legal grounds. He maintained of course that it was contrary to the statute of 1548⁹ to collect any dues from fishermen, but he further said that it was impossible for captains to spare any time out of the short fishing season of seven weeks to attend a vice-admiralty court. Since they were fined for non-attendance, Neale declared that the real purpose of Whitbourne's court was to extort money from the fishermen. Calvert did not mention the vice-admiralty court but he spoke of the habits of the fishermen of burning the woods and unloading ballast into the havens, against which Whitbourne had proceeded. Before the bill could reach its final stages James I prorogued parliament.¹⁾

1) Stock, L.F., Proceedings and Debates of the British Parliaments respecting North America, vol. I, pp. 25, 28, 35, 36, 54.

During the prerogation the Council of New England was very active in trying to enforce its rights. The records of the company are fragmentary; They only exist for the periods 31 May 1622 - 29 June 1623 and 4 November 1631 - 22 March 1637.¹⁾ The glimpses of the activity of the group of men who ran the company are tantalizing, but luckily they throw a good deal of light on the interval between the struggles in Parliament of 1621 and 1625/6. On 5 July 1622 the Council of New England was discussing a proposal to "sollicite ye Lords for procureing from his Majestie a proclamation concerning ye fishermen of ye Westernne parts. Likewise to procure some course for punishing their contempt of authority. And that Mr. Attorney bee moved herein."²⁾ A week later the same subject came up for discussion.³⁾ The fishing season was of course in full swing in July and it was too late to do anything that year, but in the Autumn the Council was busy making plans for the

1) Published in Proceedings of the American Antiquarian Society, Boston, April 24, 1867. *Proc.* vol. 1, p. 25

2) *Ibid*, p. 60.

3) *Ibid*, 62.

regulation of the ships that would set sail at the end of the winter. On 28 October 1622 it was decided to levy a toll of five fishes out of every hundred from English ships, and to prevent foreigners from making dry fish.¹⁾ On 2 November there is the first hint of the steps that the council meant to take to enforce their rules; "it is ordered that a Commission bee engrossed for Capt. Francis West and afterwards sealed."²⁾ What this commission was becomes clear from the minutes for the meeting of the 6 November. Capt. West is to sail in command of the "Plantation" to New England "to be Admiral for that coast during the voyage." Capt. Thomas Squibb was appointed to assist him, and Sir Ferdinando Gorges was to draw up his instructions.³⁾ The Council on 11 November drew up orders for regulating commerce which the Admiral was to have fixed to the mainmast of all ships.⁴⁾ The Council was careful to explain their actions; they did not mean to hinder any-

1) Ibid. 67.

2) Ibid. 68.

3) Ibid. 69.

4) Ibid. 70.

one from going to fish in their waters provided they obtained a proper license from the treasurer at Exeter.¹⁾

But West was only to have admiralty power on the coast of New England, and there was work to be done in England before the fleet set sail. Gorges always considered that an admiral was an indispensable officer. He makes this clear in both the "Discovery and Plantation of New England"²⁾ and in "Brief Narration".³⁾ The proposal, then, which was made in January 1622/3, that Sir Samuel Argell should be Admiral of New England is only the natural outcome of Gorges's ideas on administration. The idea was developed at a following meeting, when the Council decided to consider "fitt persons to bee elected to attend the said Councell and Service upon all occasions vizt. An Admiral, a Vice Treasurer, a secretary of Councell, a Solicitor of ye publike businesse, a Beadle for summoning the Councell to their meetings".⁴⁾ The appointment angered Captain John Smith, who always

1) Ibid. p. 77.

2) Gorges and Maine p. 238.

3) Ibid. p. 66.

4) Proc. Amer. Antiq. Soc. April 1867, p. 81.

maintained that he had been appointed Admiral of New England for life,¹⁾ though owing to various misfortunes, he had never acted as such. Whether Argall ever did anything it is impossible to say for the minutes of the Council end soon after his appointment, and the Calendar of State Papers Colonial reveals no trace of any activity on his part.

West was however active. The Council considered the expenses of the expedition in January 1622/3 and the possibility of building a pinnace in New England, obviously for use in collecting the fishing licences in waters where a larger ship could not be used.²⁾ Towards the end of June West arrived in New England "to be Admirall of all the country, to restrain interlopers, and such as came either to fish or trade upon the coast without license from them", i.e. the Council of New England.³⁾ Apparently the Council had decided in the spring that West's expedition would not be sufficient for Hubbard continues "In the end of August following arrived there

Capt. John Smith, ed. Arber, The General History of Virginia, New England, and the Summer Isles etc. p. 137

2) *Ibid.* p. 82. ^{Proc.} Amer. Antig. Soc. April 1867, p. 82.

3) Hubbard, Rev. William, A General History of New England from the Discovery to 1680, (1848) p. 86.

Captain Robert Gorges, son of Sir Ferdinando, sent from the Council, as Lieutenant-General over all New England, for preventing and reforming all such evils and abuses as had been complained of to be committed by the fishermen and others, who not only without order and leave frequented these coasts, but, when they were there, brought a reproach upon the nation by their lewdness and wickedness among the savages....¹⁾

It was undoubtedly these two expeditions that made the Commons so anxious to break the patent of the New England Company. An agitation was begun in the House of Commons, which led to the recall of Gorges and West for Hubbard does not mention them again. Three bills to secure free fishing were brought in between February 1623/4 and June 1628,²⁾ which, though they did not pass, established the principle that fishing was free. Subsequent patents always contained a clause securing this right.

Though the attempts made by the Council of New England and by the Newfoundland planters to establish

1) Ibid.

2) Stocks, L.F., Proc. and Debs. in Parliament, vol.I, pp. 54, 74, 75, 79, 80, 82, 94.

vice-admiralty courts in their plantations came to nothing owing to the opposition of the western ports, neither Mason nor Gorges gave up the idea of realizing the grants of marine jurisdiction made to them in the various patents they had received. Already on 9 March 1621/2 Mason had been granted the tract of Mariana by the Company of New Plymouth and his patent expressly gave him "Marine Power"¹⁾. This same phrase was inserted in the grant of Maine which Gorges and Mason received in the August of that same year²⁾, and also in the grants of New Hampshire and Laconia to Mason made in 1629³⁾. The Pascataway grant made to Gorges and Mason does not employ this phrase but it secured jurisdiction over the sea within a hundred miles of the coastal ports⁴⁾.

There is no evidence that either Gorges or Mason ever succeeded or even tried to carry out these grants by setting up admiralty courts, or even by appointing vice-admirals. Probably the clauses were inserted in

1) Tuttle, C.W. and Deane, J.W., Captain John Mason, p. 173.

2) Ibid. p.179.

3) Ibid. p. 186.

4) Documents, Maine, vol.I. p. 144.

the patents so that if in future days trade developed and the colonies had a sea-faring population the proprietors would then be able to control admiralty cases and droits. Possibly they were also intended as some means of controlling the fishermen who frequented the coasts, for some of the grants also secured the fishing rights to the proprietor.

Although nothing was done to make any use or profit of these admiralty powers neither Mason nor Gorges can have considered them useless. When in 1635 the Company of New England handed its patent over to the king, and Charles I's council planned to make New England a royal province with Sir Ferdinando Gorges as Governor, it was decided that Mason should be Admiral. Since his time in Newfoundland Mason had twice been in America, in 1623 as deputy-governor at New Plymouth, and from 1629 to 1634 in Laconia. When not in America Mason had filled various administrative posts such as commissary-general for the Cadiz expedition of 1626. In 1634 on his return from Spain he was appointed

governor of Southsea Castle, and Treasurer of the association of the three kingdoms for a general fishery, one of the many schemes of the seventeenth century for developing British fisheries.¹⁾ This all shows that he was well-thought of by the government and was still taking an active part in colonial and fishery schemes and was therefore very suitable for the post of vice-admiral of New England. Unfortunately Mason died before he could exercise office. It is obvious that he took the post seriously for two letters of his, printed by Tuttle, show that he was making efforts to secure as ample a commission as possible. On 11 July 1635 Mason wrote to Nicholas asking him to induce the lords of the Council to grant him large powers, because of the difficulty of administering justice in so large an area with so scattered a population²⁾. Before Nicholas could get anything done Mason was ordered to Portsmouth. He wrote just before his departure to a friend, Robert Smith, asking him to take up the matter of the commission and

1) D.N.B. article John Mason.

2) Tuttle, C.W. and Deane, J.W., Captain John Mason, p.345

get "a booke drawne for the office of a Vice Admirall and send it to me to Portemouth that I may see it before it be ingressed."; Mason was obviously afraid of having his powers limited by careless drafting. On 1 October 1635 the order for Mason's patent was issued by the Council; the terms specified were ample enough to satisfy any enthusiast, for he was to have jurisdiction between the fortieth and forty-eighth parallels the "South Seas and Coastes thereof, together with California and Nova Albion being all contained within the said Latitude, and also all lakes and loughes within the lands whether they be fresh, or salt water..."¹⁾ His powers were to be those of an English vice-admiral, including those of appointing a judge, registrar and marshal. On Mason's death no one was appointed in his place, and so the attempt to set up vice-admiralty authority came to an end.

- 1) Tuttle, C.W. and Deane, J.W., Captain John Mason, p. 347. 1638 was the year when Charles I made provision for his second son, James, to become Lord High Admiral as soon as he was old enough. cf. Sp. 17. Case E, no. 3 for the direct warrant prepared at a meeting of the Council, 7 April, 1638. Cal.St. Pap. Dom. 1637/38, p.351.

Nor was Gorges any more successful. His charter to Maine issued in the fifteenth year of Charles I's reign detailed the admiralty powers and privileges which were to be his in the palatinete of Maine; wreck, royal fish, flotsam, pirates' goods, all were his droits. But the charter has a new limitation which seems to foreshadow post-restoration practice. "And we do further.....grant unto the said Sir Ferdinando Gorges his heirs and assigns for ever all Admiral Rights, Benefits and Jurisdictions in any wise belonging.....in and upon the Seas, Rivers and Coasts of or belonging to the said Province or premises or any of them,...and likewise power to hear and determine all manner of Pleas for and concerning the same, Saving always to Us... and to the Lord High Admiral of England for the time being....all and all manner of Jurisdictions, Rights, Powers, Benefits, and Authorities whatsoever incident or belonging to the said Office of High Admiral, which it shall and may be lawfull from time to time to Us....or to the Lord High Admiral for the time being to have use or exercise with-

in the said province".¹⁾ This seems to forecast the control of the colonial vice-admiralty courts which a quarter of a century later the Duke of York tried to develop, and which was actually achieved after 1696.

In this early period there was experiment, there was realisation of the need for admiralty courts in the colonies, but the doctrinaire advocates of a colonial vice-admiralty system could not carry out their doctrines. At home the western ports, with their strong interest in keeping the North Atlantic fisheries free, were able to enlist the parliamentary party on their side. The dislike of the admiralty courts as a support of the crown probably helped to some extent. The struggle of king and parliament was indeed largely responsible for the failure of the Newfoundland planters and the Company of New England. Had it not been for the outbreak of civil war Gorges would have persisted in his efforts, but the preoccupation of both the royalists and parliamentarians left Massachusetts free to take up an independent

1) Gorges and Maine, vol. II, pp. 126-129, 139.

attitude, so that the scheme for a royal province with its admiralty system came to nothing. Perhaps the failure was to the good of the colonies, and trade and fishing flourished the more along the New England coast because of the lack of that regulation which vice-admirals might easily have turned into meddlesome interference. There was however a price to pay for freedom, and as Boston and other ports became flourishing centres of trade the need for admiralty jurisdiction was felt but not supplied. The first period of conscious attempt to establish vice-admiralty courts in colonies was over, and the colonies were now left to deal unaided with the problem of admiralty jurisdiction.

CHAPTER IV.

THE DEVELOPMENT OF VICE ADMIRALTY JURISDICTION IN MASSACHUSETTS.

Massachusetts has always been regarded mainly as a Puritan colony, and its religious aspects have therefore attracted the most attention, to the neglect for many years of the important commercial history of the early colony, but Boston very early became a flourishing port, with ships sailing to the West Indies, the Canaries, and Newfoundland as well as to Europe. The volume of trade at Boston was probably greater, and certainly more varied in commodities, than at any other British port in the Americas before the capture of New York. In Virginia and the Bermudas tobacco was the only commodity sent to Europe; at Barbadoes first tobacco and then sugar and its products formed the bulk of the cargoes exported; but at Boston the merchants dealt in fish, for there soon grew up an entreport trade

between the Banks and the West Indies or Mediterranean, in lumber, especially casks and pipe-staves for the Canaries and Madeira, in rum and molasses, the return cargo from the West Indies, and in furs. The lack of fertile farming lands stimulated the growth of a trading and sea-faring population, and commerce was peculiarly important to the settlers in the colony of Massachusetts Bay. Such a colony obviously needed some means of dealing with the legal disputes that arose ~~up~~ from time to time.

Under the charter of 1628 the colony of Massachusetts Bay received a grant of "jurisdictions... both within the said tract of land upon the maine, and also within the islands and seas adjoining",¹⁾ and thus the government of the colony was able to deal with admiralty cases on the spot. The judicial system of Massachusetts tacitly gave the general court, which was also an executive and legislative body, power to try admiralty cases. It must be remembered that this general court was an oligarchic body, for the franchise in Massachusetts depended on church membership, which was hard to win and easy to

lose

1) Lucas, Samuel, Charters of Old English Colonies. p.32.

less. Power in Massachusetts was thus in the hands of a small group of narrow-minded but capable men. This affected the admiralty suits less than those in civil or criminal cases, but occasionally rigidity of the religious views of the general court affected its judgements. The general court was moreover supreme in a way to which neither the council of Bermuda nor that of Virginia could pretend. By Winthrop's advice the clause, fixing the centre of government of the company in England, had been omitted, and the general court was therefore the supreme body over the colony.¹⁾ This resulted in the great independence of Massachusetts and prevented any attempts such as those made by Gorges and Argall to establish vice-admiralty from reaching success.

During the period before the civil war Massachusetts was busy building up her government and trade, and, as was natural in a young colony, there was not as much admiralty business to be done as when the colony was well established. It is clear however from the records, that there must have been a good deal to be done even in the early years. The provision which was made in 1639 for special courts, consisting of the Governor or his deputy,

1) Lucas, Sir Charles, Origin and Growth of Greater Britain. p.89.

two magistrates and a jury, to try cases involving strangers, points to the difficulty of keeping ships waiting in harbour until the ordinary meeting of the general court, and was probably intended to meet the need for special means of dealing with commercial and admiralty cases.¹⁾

Otherwise all cases came before the general court until, as the colony grew, it became necessary to develop the judicial system. In 1641 quarter courts with the same powers as the general court were established at Ipswich and Salem and by 1652 county courts were meeting regularly.²⁾

Thus special courts became less necessary, and, since they were expensive, in 1650 strangers were permitted to bring their cases in any court.³⁾

Two years later juries were abolished in all civil suits unless one party specially asked for a jury; in that case the said party had to pay the jury, and a regular scale of fees was drawn up.⁴⁾

Thus in

1) ed. Shurtleff, W.B., The Records of the Governor and Company of Massachusetts Bay in New England, vol.I, p. 264.

2) Ibid., p.325; vol.III, p. 262.

3) Ibid., vol.IV, p.20.

4) Ibid., vol.III, p.262, vol.IV, p.81.

Massachusetts an admiralty case might come before any court and be tried by common law. No provision was made for administering the peculiar law of the sea, nor were the cases tried by men who were specially trained in civil and admiralty law, as was the case in England, where not only the judge of the high court but also the judges of the vice-admiralty courts had to be discreet, learned and experienced men in the civil laws.¹⁾

The first admiralty case in Massachusetts came up in 1630. Thomas Moulton was ordered to pay his employer Mr. Ralfe Glover forty shillings or to take a flogging, for deserting his boat at Plymouth and leaving Glover to get back to Boston without a pilot. The fine was a heavy one, probably two to four weeks wages, but Cape Cod and its shoals lay between Boston and Plymouth, and the desertion of a pilot was a serious matter.²⁾ The next case (1633) also concerned Plymouth and throws light on a strange state of affairs at New Amsterdam. A Virginia ship commanded by Captain Stone put in at the

1) H.C.A. misc 409.

2) Massachusetts Records, vol.I, p.82.

"Dutch plantation", where Captain Stone and the Governor fell to drinking. While they were thus busied a pinnace arrived from Plymouth, and Stone, who must have been half-seas over, fancying "those of Plymouth had reproached them of Virginia" got the governor to help him seize the pinnace, declaring he meant to take her away. The pinnace was rescued by some of the inhabitants of New Amsterdam and kept safe till the potency of the liquor had passed away. Next day the governor and Captain Stone tried to make peace and got the master to sign an agreement to ignore the affair. Soon after the council of Plymouth learnt that Captain Stone had arrived at Boston. Now the master of the pinnace was a councillor of Plymouth, and being naturally wrath, on his return he broke his word and got the council to make representations to Governor Winthrop and the general Court of Massachusetts. They bound Captain Stone over "to appear in the Admiralty Court in England" but explained to the Plymouth Council that the matter would not bring them credit, and that Captain Stone could not be convicted of

piracy. Plymouth dropped the matter. Apparently the General Court of Massachusetts recognized the limits of its jurisdiction and was ready to help the English courts to take cognizance of offences committed on

British ships.¹⁾ This was an extension of the work done by the vice-admirals of the coast, who were accustomed to act to some extent as the administrative officials of the high court of admiralty. There must during this early period have been cases of a petty nature which have escaped record, for in 1636 an order was made against taking ballast from the beach at any town. It is unbelievable that no ship-master, pressed for time, took ballast, or that no such master was caught red-handed.²⁾ An inquest is recorded in 1637 by Winthrop which in England would have been dealt with by an admiralty court. It was the custom at Boston for incoming ships to anchor at Castle Island until they had been visited and found to be friendly; not until then were they allowed to enter the harbour. An incoming ship which did not comply with

1) Winthrop, J., ed. Savage, J., The History of New England from 1630-1649, vol. I, p. 185.

2) Massachusetts Records, vol. I, p. 185.

this regulation was fired at from the Castle to warn her to anchor. The shot was probably not meant to hit the vessel, but unfortunately did so, killing a passenger.¹⁾ Another case which was also dealt with by the ordinary courts and was properly an Admiralty case, was that of the "Mary Rose". This ship blew up in Boston harbour in 1641, and sank with all her ordnance, ballast and cargo, blocking the harbour badly. The general court gave the owners a year in which to free the harbour, but the owners shirked the job and agreed with Edward Bendall that if he freed the harbour he should have all he recovered, otherwise he should have half of everything salvaged. By using primitive diving-bells Bendall weighed the Mary Rose and freed the harbour. One of the guns thus saved had about £30 in coins of various administrations loaded in the muzzle. Somehow this gun was shot off, exploded, and the money was scattered. An eager crowd collected it and refused to return it until Bendall brought an action in the general court to recover the wreck which had been adjudged to him.²⁾

1) Winthrop, J., Hist. of New England, vol.I, p.227.

2) Ibid., vol.II, pp.72,73.

It is not until after 1640 that the records show a great quantity of admiralty business to be done. The sudden increase was partly due to the growth of Boston, but partly also to the conditions which were the result of the civil war. In an age when privateering was a common method of adding to the profits of a trading voyage, a civil war gave new opportunities of capture, and Atlantic commerce was exposed to new dangers. Many of the privateers, both Royalist and Parliamentarian, seem to have waited off the Bristol Channel or the Scillies for returning ships, but others went further and made their captures in colonial waters if they fell in with a likely ship. The result was that merchant vessels went in constant fear of capture. Both royalists and parliamentarians were ready to seize any excuse for taking a ship, and paid little regard to the politics of their victims. Some indeed were ready to make captures even in harbour. At Boston this became such a curse that the general court issued the following order in 1645:- "It is hereby declared to all masters and owners of ships that shall voluntarily come with ships to trade with us

from any ports abroad, that it is the mind of this Court, and it is hereby ordered, that no ships, being within our harbour, shall be suffered to fight with any other ship or vessel during the time of their abode there, nor shall be molested by us, except shee give just ground of offence..."¹) This astonishing order was the result of the events of the previous year connected with the two ships from Bristol and Dartmouth.

In the summer of 1643 Bristol had surrendered to the Royalist forces under Prince Rupert, and a ship from Bristol was thus fair game for any Parliamentarian vessel in 1644. In that year a Bristol ship came to Boston and took in a cargo of fish for Bilbao. While she was lying in Charles river a London vessel commanded by Captain Stagg arrived at Boston. Captain Stagg had Letters of marque from the Earl of Warwick, who had been made Lord Admiral by the Parliament, but saying nothing of this commission, the captain dropped down with the tide to where the Bristol ship was lying and summoned her to surrender. Some of the crew wanted to resist, but the greater part would not fight, and Captain Stagg got his

1) Massachusetts Records. vol.III, p.17.

prize easily. All this had been watched by a crowd from Windmill Hill, and those who had an interest in the Bristol ship started a riot. It was quickly put down and the disturbers of the peace were brought to the Deputy-Governor who put the leaders under arrest, and sent out the constables to disperse the crowd. Then he wrote to Captain Stagg to know by what authority he had seized the Bristol ship. The reply was the commission from the Lord Admiral, which recited the ordinance of Parliament to the effect that it was lawful to seize "ships of Bristol, Barnstable, Dartmouth etc. in hostility against the king and parliament, and to visit all ships in any port or creek..." and laying down the usual regulations about the condemnation of prizes taken by privateers.¹⁾ The Deputy governor bound Stagg over to appear at the meeting of the court at Salem and there to produce his commission. Sunday intervened and some of the elders tried to influence public opinion by preaching against Stagg, and declaring that the patent of the colony was infringed

1) Winthrop, J., Hist. of New England, vol.II. p.181.

by such a commission but when the court met it was obvious that the majority were prepared to support Stagg.¹⁾ Winthrop gives the five reasons which swayed them to this course.

"1) Because this could be no ~~pre~~cedent to bar us from opposing any commission or other foreign power that might indeed tend to our hurt and violate our liberty; for the parliament had taught us, that *salus populi* is supreme *lex*.

2) That the king of England was enraged against us, and all that party, and all the popish states in Europe: and if we should now, by opposing the parliament, cause them to forsake us, we could have no protection or countenance from any, but should lie open as a prey to all men.

3) We might not deny the parliament's power in this case, unless we should deny the foundation of our government by our patent; for the parliament's authority will take place in all peculiar and privileged places, where

1) Ibid., p. 182.

the king's writs or commissions will not be of force, as in the Duchy of Lancaster, the Cinque Ports, and in London itself, the parliament may fetch out any man, even the Lord Mayor himself, and the reason is, because what the parliament doth is done by themselves, for they have their burgesses etc. there; nor need they fear that the parliament will do any man wrong: and we have consented to hold our land of the manor of E. Greenwich, and so such as are burgesses or knights for that manor, are our burgesses also. This only might help us, that the king giving us land which was none of his, but we were forced to purchase it of the natives, or subdue it as vacuum domicilium, we are not bound to hold that of him which was not his. But if we stand upon this plea, we must then renounce our patent and England's protection, which were a great weakness in us, seeing their care hath been to strengthen our liberties and not to overthrow them: and if the parliament should hereafter be of a malignant spirit, etc. then if we have strength sufficient, we may make use of salus populi to withstand any authority from

thence to our hurt.

4) Again, if we who have so openly declared our affection to the cause of the parliament by our prayers, fastings, etc. should now oppose their authority, or do anything that might make such an appearance, it would be laid hold on by those in Virginia and the West Indies to confirm them in their rebellious course; and it would grieve all our godly friends in England, or any other of the parliament's friends.

5) Lastly, if any of our people have goods in the ship, it is not to be questioned, but upon testimony the parliament will take order for their satisfaction."¹⁾

As a piece of casuistry this argument is magnificent, and it well illustrates the attitude which the Massachusetts government held towards their claims to exercise admiralty jurisdiction. The safety of the Colony was put first, but the safety of their property was not ignored. The governor took steps to safeguard the merchants who had shipped goods on the Mary Rose. When they procured an attachment against Stagg and the

1) Ibid., vol.II, pp. 182, 183.

case came up at a special court before Governor Winthrop and six magistrates and jury, Winthrop persuaded them to withdraw it, on the grounds that the jury could do nothing but declare the goods had been shipped by the merchants, and this the council would certify themselves. So it ended the following year in the Governor and company of Massachusetts Bay sending a petition to the High Court of Admiralty that the merchants should not suffer loss, nor trade with New England be interrupted by such seizures.¹⁾

Before this petition was even drafted the peace of Boston harbour was again disturbed, and this time the government of Massachusetts did not bear with it so placidly. Not long after Stagg sailed for England with his prize, there came in a ship from Dartmouth. The royalist forces had taken Dartmouth in 1643, had imposed the oath of allegiance on the town, and had impressed the ships. Since the navy had at the beginning of the war joined the Parliament, the royalists were short of vessels, and the capture of an important port was of

1) Winthrop, J., Hist. of New England, vol. II, p. 186; Massachusetts Records, vol. III, p. 31.

great use to them. It enabled them to send out a fleet, under the Earl of Marlborough, consisting partly of ships taken at Dartmouth. Among them was the vessel in question. Her master was a staunch parliamentarian, and, having managed to give the slip to the royal fleet, put into the "Spanish Islands" where he got a cargo of wine and salt. Thence he sailed first to Virginia and later to Boston. There his vein of luck ended. Lying in Boston harbour was the Gillyflower of London, Captain Bayley master, and another London ship commanded by Captain Richardson. Bayley had a commission from the Parliament, and made ready to seize the Dartmouth vessel as a malignant, but seeing that preparations were made to resist him, changed his mind. At this moment the merchants of Boston realised that there was a chance of recovering a bad debt. Two Massachusetts vessels worth £1500 had recently been taken by the royalists while trading in Wales;¹⁾ here was a vessel from a royalist port lying in Boston harbour. There were

1) Winthrop says one small vessel in vol.II, p.192 and two vessels in vol.II, p.195.

technical grounds on which she could be seized to reimburse the Boston merchants, for the case was analagous to that in which an enemy ship could be seized and condemned by order of the admiralty court in recompense of a vessel that had been taken by the enemy. The governor of Massachusetts sent for the master of the Dartmouth ship, who was only too anxious for protection since he had learnt that not only Bayley and the Boston merchants wanted to seize his ship, but that Captain Richardson was also preparing to attack him; and it was agreed that the Dartmouth ship should be taken under the protection of the government until the cause could be tried by the next court. The Deputy-governor sent word to Richardson of the settlement which had been reached, and forbade him to attack the ship on the grounds that his shot was bound to do damage in Boston. In spite of this Richardson attacked next morning, took the master prisoner, and refused to come ashore when summoned by the governor. Winthrop regarded this as contumacy, not understanding that Richardson was afraid his crew would fall plundering

if he left them, ordered the battery to fire on Richardson's ship, and sent out forty men to recapture the Dartmouth vessel. This done, Richardson came before the council and pleaded his commission from the Admiral in extenuation of all he had done. He only surrendered to Winthrop because the Massachusetts government made a show of force and could easily have sunk both vessels if they chose. At any rate Richardson's attempt to win a prize failed for the Massachusetts government, seeing that his commission was only an ordinary letter of marque from the Lord Admiral and not a commission under the great seal, refused to recognise the jurisdiction of the Admiral. They dared to defy the Earl of Warwick when they did not feel that Parliament could be defied with impunity.

The general court then sat to discuss the fate of the Dartmouth vessel. They found that the ship was originally a parliamentarian ship, taken at the capture of Dartmouth, that she had escaped, and had been subsequently sold in part to a merchant of St. Christopher's. Since she was partly owned by her master, the elders who

were called in held her still to be a Dartmouth vessel and as such royalist, and accordingly the governor and council ordered her to be seized by the merchants who had suffered losses in Wales "giving security to be responsible and 8 pounds per 100 if she should be lawfully recovered within thirteen months, but the company to have their wages and goods."¹⁾

From this case it is clear that the Massachusetts colony considered that complete admiralty jurisdiction was granted in the patent. What exactly was the difference between the commissions issued to Captain Stagg and Captain Richardson it is hard to say, but the first recited in part the statute passed by parliament authorising attacks on royalist ships, and it was moreover sealed with the great seal. It was certainly not an ordinary letter of marque or reprisal which was all that Richardson had. Why parliament should have issued a special commission is obscure, but the fact that Captain Stagg had the authority of Parliament behind him was enough to make Winthrop and the Council walk warily.

1) Winthrop, J., Hist. of New England, vol. II, pp. 192, 194, 195.

1644 and 1645 were not easy years in Massachusetts, and Captain Bayley of the Gillyflower, who wanted first to attack the Dartmouth ship, was already likely to involve the colony in a dispute both with the high court of admiralty and with Parliament.

In the spring of 1643¹⁾ the Gillyflower, Captain Bayley, had been chartered by a Madame la Tour to convey her and her people from England to her husband's fort in Acadie. She was the wife of Charles la Tour, a Huguenot, who had received from the king of France a grant in Acadie. At this time he was actually at war with d'Aulnay, a French catholic, who had received a patent as governor of Acadie. During the struggle M. la Tour appealed to Massachusetts for help, and received some slight support. In 1643 he was hoping for further aid, for d'Aulnay had already attacked the la Tour fort. This is, however, not the place to go into the details of the struggles of la Tour and d'Aulnay. It is enough to remember that it was necessary for Captain Bayley to take great care to evade d'Aulnay's ships

1) Stock, L.F., Proc. and Debs. in Parliament, vol.I, p. 160.

cruising off Acadie, and that the relations of Massachusetts and the la Tours were in 1644 on the whole friendly, several of the Boston merchants having lent the Frenchman money, which they did not want to see vanish in ruin and defeat at the hands of d'Aulnay. Off Cape Sable, where the la Tour fort stood, the Gillyflower sighted another vessel; Captain Bayley hid Madame la Tour and her people under hatches, and made for Boston when he found the vessel belonged to d'Aulnay.¹⁾ This was in the summer of 1644, for the ship had not left till autumn nor come direct from England,²⁾ but had first put in at several settlements up the St. Lawrence. Mme. la Tour naturally annoyed at reaching Boston instead of her husband's settlement, went ashore, putting up at the house of Captain Ed. Gibbons, to whom la Tour owed a large sum of money.³⁾ There she stayed for some months, trying to make arrangements for going on to Acadie, a difficult journey since d'Aulnay knew of her

1) Winthrop, J., Hist. of New England, vol. II, pp. 192, 201.

2) Winthrop, J., Hist. of New England, vol. II, p. 192.

3) Stock, L.F., Proc. and Debs. in Parliament, vol. I, p. 162. Bayley said £1400.

being at Boston, and yet a necessary one, since la Tour was depending on her to bring new supplies, for d'Aulnay was preparing a new attack. An armed convoy was necessary but expensive;¹⁾ money was lacking to Mme. la Tour, and the only way of getting money, other than by borrowing, was to sue Captain Bayley²⁾ and the owners of the Gillyflower, Alderman Berkeley and Henry St. John, for breach of charter-party. Accordingly Mme. la Tour³⁾ instituted proceedings in a special court at Boston and pleaded that Captain Bayley had broken the charter-party by trading up the St. Lawrence instead of sailing direct to Acadie. She was awarded £2071 damages by the jury, and had Captain Bayley and the supercargo Isaac Berkeley, brother to the Alderman, arrested and detained until they handed over the cargo of the Gillyflower as security.⁴⁾ Bayley and Berkeley petitioned to be allow-

- 1) Winthrop, J., Hist. of New England, vol.II, pp.192, 202.
- 2) Stock, L.F., Proc. and Debs in Parliament, vol.I, p.160. Bayley is also called John de Bailly and is said to be French.
- 3) The ordinary procedure in case of strangers.
- 4) Winthrop, J., Hist. of New England, vol.II, pp.98, 199, 201; Stocks, L.F., Proc. and Debs. in Parliament, vol.I, p.160.

ed time to bring testimony from England which would prove that the charter-party produced by Mme. la Tour was a fraudulent one carried for the purpose of deceiving privateers.¹⁾

The petition, however, was rejected on the grounds that they had refused two good offers made by Mme. la Tour by which she had promised security to return the value of the cargo if judgement was reversed, or to be content with £500 if Bayley and Berkeley would give security for any further damages if they lost the case.²⁾

From that moment the legal war between Mme. la Tour and Captain Bayley and his owners turned on the two charter-parties carried by the Gillyflower.

During the civil war many merchant captains tried to protect themselves by carrying double sets of papers. When stopped by another vessel the captain could produce the set most likely to please those who came aboard. The Gillyflower was no exception. A charter-party had been drawn up at London and signed by Alderman Berkeley and Captain Bayley on one side and Mme. la Tour on the

1) Coll. Mass. Hist. Soc. 3rd series, vol.VII, p.98.

2) Ibid. p.99.

other. According to this Bayley claimed that the voyage was to be first to Archibusto and then to St. John's River, where la Tour's fort was situated.¹⁾ At Falmouth the Gillyflower put in and a second charter-party was made by Captain Bayley and Mme. la Tour, by which the voyage was to be direct to St. John's river. Now Falmouth was in the region where the royalist privateers were very active, the Scillies and Jersey being their bases, and Bayley's contention, that this was a feigned charter-party made to show to royalist captains and to conceal his purpose to go trading with the puritan colonies, is supported by the fact that it was at Falmouth that the agreement was made.²⁾

When Bayley failed to get the case postponed till he could get evidence from England, the master, Pilgrim by name, brought an action upon the cargo, the first charge on which was the freight and wages bill.³⁾

The jury found against him, and Pilgrim appealed to

1) Stocks, L.F., Procs. and Debs. in Parliament, vol. I, p. 160.

2) Ibid. ; Coll. Mass. Hist. Soc. 3rd Series, vol. VII, p. 98.

3) Winthrop, J., Hist. of New England, vol. II, pp. 189, 202; Massachusetts Records, vol. II, pp. 84, 90.

the next general court for redress. There too fortune was against him, for, though the deputy-governor and some of the deputies thought he should have the wages and freight, the majority considered that they were not due until the ship reached London again, and so voted against Pilgrim.¹⁾

With pertinacity Pilgrim brought the case before the court of assistants, where two of the assistants thought the case should not be heard as the general court had decided it already; the majority decided to hear it as the verdict of the general court had made no order about any further hearing. The jury was therefore called upon to decide whether the cargo was security for the freight and wages, and a verdict in favour of Mme. la Tour was returned.²⁾

This was the end of the attempts made by the Gillyflower people to regain their cargo and get the freight and wages paid. The Gillyflower dropped down the river below the castle, and soon after the affair of the Dartmouth ship Bayley set sail in company with a

1) Winthrop, J., Hist. of New England, vol. II, p. 199.

2) Ibid.

Boston ship for London. Both vessels carried passengers, among whom were Stephen Winthrop, who had been recorder of the court when the case of the Gillyflower was tried, and Joseph Weld who had been on the jury.¹⁾ Bayley brought back with him a certificate of what had happened, signed by merchants of Charlestown who had an interest in the cargo. Winthrop declared that this certificate did not tell the whole truth, contending it concealed all that was against the interests of the Charlestown merchants, who had investments in the ship and so had supported Bayley in opposition to the Boston merchants, who were involved in la Tour's fortunes. The governor of Massachusetts obviously disapproved of the Charlestown merchants for offering security for the goods "if upon a review within thirteen months the judgement were not reversed, or the parliament in England did not call the cause before themselves." This he thought might expose Massachusetts to appeals to England, and so might lessen the independence secured

1) Winthrop, J., Hist of New England, vol. II, pp. 199, 247.

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to the colony by the patent. But Winthrop also states that the merchants of Boston were deeply engaged with la Tour and therefore backed his wife, so that it is just as likely that they did not disclose the whole truth either.¹⁾ The rights of the case does not affect the question which concerns us here. It is apparent that a special court, the general court and the court of assistants, all were regarded as proper places to try an admiralty case. It must first be heard in an inferior court, and then on appeal in the general court.²⁾ Why Pilgrim brought his case directly in the general court is not clear, but it may have been because the special court had already heard a case about the charter-party. Having brought his case in the general court there should not have been any further possibility of appeal, but only of a fresh hearing on new evidence³⁾, but apparently the order made in 1642 about appeals lying finally in the general court was not strictly regarded. Nothing of the procedure in court is to be

1) Ibid. 199.

2) Massachusetts Records, vol.II, p.16. June 14, 1642.

3) Ibid.

learnt from this case, nor anything of the law, whether civil or common, that was applied. The two important points to be learnt are that any court in Massachusetts could, and did, try admiralty cases, and that appeals to England were thought to infringe the patent.

The later phases of the struggle bear this out. Mme. la Tour having spent over £700 of the cargo on hiring three ships had gone to her husband's fort ¹⁾, to endure a siege, see the garrison massacred and die herself of shock; the struggle was now between the owners and captain of the Gillyflower and the government of Massachusetts Bay. The first move was made by Alderman Berkeley who got a Massachusetts ship, owned by a certain Fowle, attached in the admiralty court. Fowle petitioned the council of Massachusetts for aid, but they replied that all they could do was to send him a certified account of what had happened at Boston. ²⁾ Before Fowle had received this answer his ship was freed, for Berkeley had seen a better way of attack.

1) Winthrop, J., Hist. of New England, vol.II, p.199.

2) Ibid., p.247; Massachusetts Records, vol.II, p.135.

He saw that there was more probability of succeeding in a case against Stephen Winthrop and Weld, who had actually played a part in the condemnation of the cargo of the Gillyflower than there could be against Fowle, who had had no part in the case; he therefore had them attached instead and forced to find sureties for £4500 that they would appear in the high court of admiralty.¹⁾ This was in March 1645 for Stephen

Winthrop wrote to his brother John of his safe arrival and of "or troubles with Alderman Buckley, who arrested all or goods and is at sute with some of us" and Parkes who wrote in May to John Winthrop spoke of it as "a sad business for New England"²⁾. Winthrop and Weld, like Fowle, petitioned the Massachusetts government for assistance in bearing the expense of the lawsuits³⁾, but they got little help, for all the answer they had was a certificated account of the legal proceedings at Boston and advice to recover damages from

1) Winthrop, J., Hist. of New England, vol.II, p.248; Mass. Hist.Soc. Coll. 3rd series, vol.VII, p.105.

2) Ibid. 5th Series, vol.VIII, p.200; Ibid., 4th Series vol.VII, p.386.

3) Ibid., 3rd Series, vol.VII, p.105.

Berkeley by the law¹⁾. The case in the admiralty court came to nothing, but Berkeley did not give in, and, procuring a writ of ne exeat regno out of Chancery, prevented Winthrop and Weld from leaving the country²⁾. He then petitioned Parliament appealing for a letter of reprisal against Winthrop and Weld³⁾. "But it pleased God to stir them up such friends, viz Sir Henry Vane"⁴⁾ that the petition failed even though Berkeley's supporters put forward the claim of Winthrop and Endicott that Massachusetts was a free state. It was probably nervousness over the attitude of Parliament during these months that caused Winthrop and the council to go so carefully with Captain Stagg and his prize the Mary Rose of Bristol. Practically Massachusetts had vindicated its claim to immunity from appeals, but it had been done without Parliament making any stated recognition, and the events of the summers of 1644 and 1645 were making men nervous of Boston. Sir George Downing writing to the younger John Winthrop from his ship in

1) Massachusetts Records, vol.II, p.135; vol.III, p.49.

2) Winthrop, J., Hist. of New England, vol.II, p.247; Mass. Hist. Soc. Coll. 3rd Series, vol.VII, p.105.

3) Stocks, L.F., Procs. and Debs. in Parliament, vol.I, pp.160, 161.

4) Winthrop, J., Hist. of New England, vol.II, p.247.

Caplin Bay in the August of 1645 said "The meddling with Madame Latour's business, considering that neither party belonged to the country, that such security was proffered, the law of banishing for conscience, which makes us stink everywhere, the suffering ships to be taken in their harbours, under command of their guns, seems very strange, and do portend something to follow."¹⁾

What followed was an effort on the part of the general court of Massachusetts Bay to prevent any more privateering in the Charles River. On 16 June 1645 a proclamation was issued forbidding ships from attacking each other and giving assurance that no ship should be molested by the officers of the government unless she had given just cause. If a master produced a proper commission the state was ready to recognise it, and apparently in that case to authorise an attack²⁾.

But the three cases described above were not the only admiralty business that the courts at Boston had to decide. The case of Smith v Keyser for breach of charter-party also came up in the early summer of

1) Mass. Hist. Soc. Coll. 4th Series, vol.VI, pp.536, 537.

2) Massachusetts Records, vol.III, p.17.

1645 and dragged on for over a year. The trouble began at Barbadoes where Smith's ship, the Rainbow, arrived with a cargo of negroes stolen in Guinea¹⁾. There the captain delayed so long that the mate Keyser left with the Rainbow without Smith who had to pay his fare to Boston, where he brought an action against the crew and merchants interested in the cargo. The jury decided in favour of Smith, condemning the crew to lose their wages, the merchants their interest in the venture, and Keyser both his wages and his interest, which amounted to 40%. The most interesting point in the case is that the jury was composed of merchants and seamen; this is the first apparent attempt to distinguish between the ordinary civil court and a court which was hearing an admiralty case, and so needed a special knowledge of sea customs. This is not the only way in which the case approaches to the admiralty practice in London. The cargo was viewed and valued and the perishable wines sold by permission of the court, security being given for their value, just as in the case of wreck in May 1649, where the practice of an English vice-admiralty court was followed.²⁾

1) Ibid., p.84.

2) Massachusetts Records, vol.II, p.274.

As the negroes had been stolen their value was not included, and the court ordered them to be sent back to Guinea.¹⁾

These first attempts to distinguish maritime cases by using special juries and adopting English practices were very necessary. Admiralty business had grown both in volume and importance with the development of the trade of Boston and the prevalence of privateering due to the civil war. The execution of Charles I resulted in a practical state of war between England and France, and England and Spain. The royalist fleets were able to condemn their prizes in English admiralty courts sitting in Brittany, and Rupert found shelter for his fleet in Lisbon. This led to the parliamentarian supporters making reprisals on both Spanish and French vessels. The Dutch war which followed soon after gave further opportunities for privateering, though the Massachusetts merchantmen had already found opportunities to attack both French and Dutch ships.²⁾ The difficulty of dealing with admiralty cases without the aid of civilian lawyers made the Assembly and Council

1) Ibid., pp. 98, 99, 129, 176; Ibid., vol. III, pp. 13, 49, 84; Winthrop, J., Hist. of New England, vol. II, p. 244

2) Mass. Hist. Soc. Coll., 4th Series, vol. VI, pp. 267, 280; Massachusetts Records, vol. III, p. 249.

take steps in 1650 to draw up a code of maritime law. Mr. Bellingham, Mr. Howell, Mr. Willoughby, Captain Hawthorn the auditor general, and Mr. John Allen were appointed on 23 May 1650 to form a committee which was to read Malynes's Lex Mercatoria, and extract from it such laws as might be applied with advantage in the maritime cases before the courts of Massachusetts.¹⁾ The committee did nothing; it did not even meet, let alone make extracts from the standard work on sea and merchant law. On 14 Oct. 1661 the court ordered that Mr. Howell and Captain Hawthorne should form a committee, and make a code which was to be presented to the next general court.²⁾ This was confirmed a few days later by the assembly. A committee of two might reasonably have been expected to get some work done, but there is no evidence that either Mr. Howell or Capt. Hawthorne ever did anything, and the plan for drafting an admiralty code was dropped, and the courts of Massachusetts continued trying admiralty cases without guidance in the peculiarities of the civil law.

None of the cases tried in the fifties were of the Malynes, Lex Mercatoria, 1622 and reprinted several times in 17th century

1) Ibid. p.193; Ibid. vol. IV, pt.i, p.10.

2) Massachusetts Records, vol.III, p.252; vol.IV, pt.i, p.69.

importance of those described above, but their very ordinariness shows that the bulk of every day business was increasing. The quarrel of Parkman and Captain Cookin about fares to Virginia which turned on whether children cost as much as grown-ups speaks of a more established trade than the guns of Captain Richardson;¹⁾ when Thomas Kemble and Thomas Jenner sued John Pearce for detaining their cargo at Kennebecke the general court only advised the plaintiffs to petition the lord protector although Massachusetts considered Maine within the limits of her patent.²⁾ In 1654 the general court of Massachusetts further recognised the English admiralty court, for several prizemen were kept on bail till the verdict on their ship could be settled in England and notified to Massachusetts.³⁾ The only new type of business that came up in the fifties showed the colony in a less complaisant mood. In January 1654/5 Roger Williams wrote to the younger John Winthrop "We heare from the Bay that Capt. Leveret took a Dutch ship lately

1) Ibid. vol.III, p.377.

2) Massachusetts Records, vol.III, p.393.

3) Ibid., p.344; Ibid. vol.IV, p.196.

upon the Act for Trade: whether it be for that or words, he is bound to appeare at the Gen Court." It was the capture of the "Prophet Samuel" of Amsterdam that had put Leveret in disgrace. Whether a vessel taken for breaking a navigation act was at this time to be treated as a prize, it is hard to say, because ~~even~~ in England the High Court of Admiralty shared with the other courts the work of enforcing the Navigation Act. If the "Prophet Samuel" were only sailing on her lawful occasions then Leveret was either guilty of piracy, which was tried in England before a special commission of ^{which} the admiral or his deputy ^{was} ~~were~~ a member, or of trespass which could be tried in an admiralty court. The Massachusetts government did not choose to consider the act of navigation any excuse and would have punished Leverett for breaking the peace between Massachusetts and the Netherlands, only that he pleaded his fidelity to the colony. The Assembly and Council accordingly contented themselves with solemnly admonishing him in full conclave.¹⁾ The navigation act was apparently rather

1) Massachusetts Records, vol.IV, pt.1, p.229; vol.III, p.380.

a perplexity to the colonists for it did not provide any special means of punishing breaches, and the colonial governments were in doubt whether to proceed in rem or only ad personam. In 1659 John Winthrop Jr. wrote to John Richards from Hartford to ask if he had a copy of the Act. If so Winthrop wanted to know if the Act permitted the seizure of a vessel which was trading against the law, if a commission to seize a vessel was necessary, and if such a vessel had to be condemned in a prize court.¹⁾

By 1660 then the Massachusetts government had had plenty of experience of admiralty business. Prize, wreck, and civil suits had all come before the courts of the colony, and had been dealt with at first as part of the ordinary legal business. On the whole the system had been satisfactory, but the hints of dissatisfaction such as the preamble to the resolution appointing the committee to read *Lex Mercatoria* "Whereas this commonwealth is much defective for want of laws for maritime affaires", the quarrels over the Gillyflower, and possible

1) Mass. Hist. Soc. Coll. 5th Series, vol. IV, p. 56.

dangers run in the cases of the Mary Rose and the Dartmouth ship, prove that the colony must have felt the need of a special system. That no system was evolved must be explained by the preoccupation of the colony. Religious struggles at home and the attempt to extend her power over the whole of New England kept Massachusetts busy. During the fifties admiralty cases were less prominent and the work of organising an admiralty court could be left aside. So that the colony with the greatest amount of trade and a greater number of admiralty cases than any of the other colonies had not created the proper machinery by the time when the home government was ready to take up the work of organising colonial government on an imperial scale.

CHAPTER V

ADMIRALS AND ADMIRALTY JURISDICTION IN

VIRGINIA AND MARYLAND

The tide of emigration that filled the empty lands of Virginia and Maryland in the first half of the seventeenth century carried with it not only Englishmen but also their institutions. Starting with a simple form of government in which the council of the colony was the maid-of-all-work, the colonists developed their institutions on English lines as their needs grew. In spite of pestilence and war Virginia grew rapidly beyond the limits of a stockaded city, while Maryland's development was never checked as was her neighbour's by plagues and Indian massacres. The two colonies developed on the same lines for in both the nature of the country imposed itself on the settlers. The tide-water lands, intersected by winding navigable rivers flowing through fertile

tracts, lent themselves to plantation settlement. The rivers afforded a means of communication not only within the colonies but also with the ocean, for they were deep enough to allow ocean-going vessels to discharge and load cargoes at the plantation wharves. Easy communications tempted colonists to settle and cultivate along the river banks. The greater fertility of soil here was an additional attraction for beyond the alluvial lands there was little save sandy pine woods where tobacco could not easily be raised, and on tobacco the prosperity of Virginia and Maryland depended. Thus there grew up in both colonies communities of indentured servants and slaves, of overseers and of owners, living on the tobacco plantations which were strung out along the rivers. Population in Virginia and Maryland was neither concentrated in ports nor scattered on homesteads as in New England; neither entrep^ot trade, nor ship-building nor fishing were its interests. Tobacco was the beginning and the end of the economic life of the colonies; it was the one great crop, the one great export and the currency of the colonies.

Thus the ships that came to Virginia and Maryland were neither built nor manned in the colony except in rare cases. Yet ships came in plenty for the world wanted tobacco and the colonies could supply the need. So year by year merchant-men sailed either by Bermuda or by Argall's northern route bringing indentured servants and manufactured goods to supply the needs of the colonies in exchange for the season's crop of tobacco. As the commerce of New England grew ships from Boston, Salem and other northern ports sailed south with cargoes of dried fish to barter for sugar molasses or rum in the West Indies, and on their northern voyage these ships often called at James City or St. Maries for tobacco. Besides the coming and going of the ocean vessels there was plenty of local traffic on the rivers and bays of the colonies. Eastern shore Maryland could only communicate with the main colony by boat across the Susquehanna; Virginia and Maryland are also separated by water, so that there was inter-colonial traffic by boat, as well as all the traffic between the plantations and the chief towns of the colonies which was largely carried on by water, for roads were bad

and the rivers were the natural high-roads of the colony.

The institutions of Virginia and Maryland had therefore to suit a trading and agricultural people living in scattered groups and communicating with each other chiefly by water. At first the council was able to fulfil all the functions of government and to act in a legislative, executive and judicial capacity. As the frontier of the settlements was pushed further from the centre of government this became increasingly impossible and, in spite of the council holding its courts first in one place and then in another, a more elaborate system of justice had to be organised. This naturally took a form similar to the English one with which the colonists were familiar, and so an organisation of county courts grew up first in Virginia and later in Maryland. It was a convenient form of organisation for as new centres of population developed new counties could be erected, each with its courts of justice. A county court usually had jurisdiction over all civil cases which involved comparatively small sums and also over all criminal cases which did not involve a penalty of life or limb. Cases

which could not be decided in the county courts came by appeal before the council, the supreme or provincial court as it was often called. This court however retained an original jurisdiction and tried cases of all kinds.¹⁾

The personnel of the provincial court generally consisted of a few councillors, presided over by the governor or his deputy; among these councillors was often the admiral of the colony. Before discussing the nature of and procedure used in such admiralty cases as arose in Virginia and Maryland, it is well to spend a little time in investigating the office and duties of a colonial admiral. Something on this subject has already been said

but more may be added here.²⁾ In north Atlantic waters the admiral was chiefly concerned with the attempt to control the fisheries. Sir Ferdinando Gorges and his colleagues conceived of an admiral mainly as an executive officer whose business was to see that the vessels which

1) For a detailed account of the development of the judicial system in Virginia and Maryland see Bruce, Mereness, N.D., Maryland as a Proprietary Province, pp.228-278. Bruce, P.A., The Institutional History of Virginia, vol.1, and an article by Steiner, B.C., on Maryland's First Courts in Annual Report for 1901, vol.1, of the Amer. Hist. Soc.

2) See supra Chap.III.

frequented the Banks or the coasts of Maine had proper licenses from the Company of New England. In Virginia and Maryland fishing rights were not questioned, because there were no great fisheries to tempt adventurers from Europe. Yet fisheries were partly responsible for the appointment of an Admiral of Virginia. Early in the history of Virginia the Company had ideas of fostering a fishery. Sir Thomas Dale wrote in 1611 to ask the Company to appoint a vice-admiral, and hired mariners who might manage a trade with the Indians in furs, corn and fish. He went on to say that "the want of such men all this time, whom we might trust with our pynaces, leaves us destitute this season of so great a quantity of fish as not far from our own Bay, would sufficiently satisfy the whole Colony for a whole year."¹⁾ Though he wrote so favourably of the fishery, an attempt to organise a scheme for exploiting the grounds failed, yet even this failure was meritorious in the eyes of the Company for John Pountis, who had ruined himself in the scheme, was saved from bankruptcy by being made vice-admiral of Virginia.²⁾

1) Brown, A., Genesis of the United States, vol.I, p.493.

2) ed. Kingsbury, S.M., Records of the Virginia Company of London, vol.I, pp.506,522,546,547; Cal.St.Pap.Col.A. and W.I., 1574-1660, pp.70,74.

The charters of the Virginia Company of London included a grant of jurisdictions by sea and by land and a monopoly of trade. No special court was needed in the early days of the colony to enforce these rights but executive officials were needed. The chief of these were a cape-merchant, a truck-master, and an admiral or vice-admiral. The two first officials were concerned only with the cargoes imported and exported from the colony, but the admiral or vice-admiral had wider duties; he was required to protect the colony from attack by sea; he was expected to visit every ship that came into harbour, an easy task in the early days of the colony when all the ships usually came to the same port; he had to protect the Company's monopoly of trade and seize all interloping vessels. All this had to be done with the few small pinnaces that the Company kept permanently stationed in the colony, or by the Company's ships that chanced to be trading in Virginia.¹⁾ Sir Samuel Argall who was both governor and admiral of Virginia apparently considered that he could engage in privateering adventures and manage the Company's trade as well. When he fell into disgrace with the

1) Records of Virginia Company of London, vol.I, pp.214, 427, 506, 549.

Company and was recalled to England he was accused among other things of having manned and furnished the "Treasurer" for "Revenge on ye Spanish Dominions in the West Indies" with an old commission from the Duke of Savoy.¹⁾ Such commissions were obtained primarily to safe-guard the master and crew from execution on a charge of piracy for the English admiralty courts generally refused to condemn captures made under foreign commissions, though sometimes they would condemn prizes made under letters of marque or reprisal issued by an ally against a common enemy.²⁾ The venture was disliked in Virginia as it was thought that Argall's action might lead to a Spanish attack. Quite as important as this possibility was the conviction in the minds of some of the colonists that Argall "hath gotten possession and keepes back our Hydes under pretence of being Admirall which cost our joint stock well neare - 400 li - with a great deale of toyle and trouble before wee could obtayne them"...³⁾

The importance of this accusation is not to be

- 1) Records of Virginia Company of London, vol.II, p.402.
- 2) E.H.R. vol.^{xxv}xxvi, article by R.G.Marsden on English Prize Law.
- 3) Records of Virginia Company of London, vol.II, p.54.

found in its possible truth, but in the light that it throws on the financial position of a colonial admiral. There was no fixed salary attached to the post, but from time to time grants were made in recompense of services rendered. These were not made until after Argall's fall though a previous vice-admiral Captain Daniel Tucker had petitioned for a grant of "some Competent portion of Land in Virginia."¹⁾ When Pountis was made vice-admiral, the Council in London discussed the question of suitable remuneration and made a grant of three hundred acres near James City, overlooking the harbour so that the vice-admiral might from his estates keep watch over the shipping. Twelve tenants were to be settled on the land to cultivate it for the vice-admiral, and later some of the children sent out by the City of London were allotted to him.²⁾

The admiral and vice-admiral of Virginia were then executive officials, exercising no judicial powers by right of their office; it might well be that the men who held these offices were members of council and so sat in the general court of the colony, but that court did not use

1) Records of the Virginia Company of London, vol.I, p.427.

2) Ibid. p.506, vol.II, pp.75, 91.

admiralty law. In Maryland however the office of admiral was generally held by the governor or his deputy, and thus the admiral was almost invariably the president of the provincial court.¹⁾ Only four men, who did not hold the post of governor, are described as admirals, and of these but little is known. In 1649 Lieutenant-governor Stone dismissed Richard Husbands from the post of admiral for "grosse abuses and miscarriages", apparently connected with an assault committed by Husbands on John Dandy, the colony's blacksmith and a turbulent rogue, on board the "Green Popinjay"²⁾; Edward Gibbons was described as Major General of New England when he was appointed councillor and Admiral of Maryland, but of his activities there is no trace.³⁾ Of the other two a little more can be gathered. In 1659 Samuel Tilghman declared before the provincial court of Maryland that he had received a commission from Lord Baltimore "to bee Admirall in all the sd Province, thereby giving and graunting mee Samuel Tilghman of London Mariner the full

1) Archives of Maryland, Proceedings of the Council. passim.

2) Ibid., 1637-1667, pp.248, 249, Arch.Md., Proceedings of the Provincial Court, 1649/50-1657, p.25.

3) Arch.Md. Proceedings of the Council, 1636-1667, pp. 261-263.

third part or parts of all Wracks or fforfeitures with in the said Province committed below high water marke." By virtue of this commission Tilghman claimed his share of Mayflower, Daniel Hutt master, which was condemned for trading with the Indians without license.¹⁾ Eight months later Philip Calvert, as Receiver General, brought a suit against Captain Miles Cooke for port duties. Cooke refused to pay on the grounds that he was exempt as one of Lord Baltimore's admirals.²⁾ These four men, however, were exceptions, and usually the governor or his deputy held the office of admiral.

In Maryland the administrative duties of the admiral were not so great as in Virginia, where the Company had tried at first to maintain a monopoly of trade. Though the admiral of Maryland was really less important, yet in Maryland an attempt was made not long after the founding of the colony to erect an admiralty court for in 1638 the Assembly of Maryland was busy organising the colony's judicial system and, alongside of bills providing for county courts, a bill for erecting a court of admiralty was read, engrossed and apparently passed by the Assembly.

1658-1662,

1) Arch. Md. Proceedings of Provincial Court, pp.302,303.

2) Ibid., p.346.

The bill provided for the Admiral or his commissioner to hear and determine causes, and for the appointment of a registrar who should keep the necessary files and issue warrants under the great seal of the colony; moreover it was expressly stated that the court was to be a court of record. In civil cases there was to be no jury as in the English Admiralty courts, but in criminal cases there was to be a jury of at least five merchants, mariners or freemen of the province.¹⁾ In the colonies great insistence was laid on the need of a jury in all criminal and in many civil trials, probably because many of the emigrants of the seventeenth century disliked the prerogative and chancery courts of England where no jury was used. When admiralty courts of the English pattern were organised in the colonies, one of the objections most often raised was that no jury was used, and that trial by jury was an English liberty secured by Magna Carta.²⁾ The admiralty court of Maryland was to administer the laws of the province or in default of them the Law Merchant of England, such as was used in the High Court of Admiralty

1) Archives of Maryland, Proceedings and Acts of the General Assembly, 1637/8-1664, pp.34, 46, 47.

2) Mereness, N.D., Maryland as a Proprietary Province, pp.268, 269; ed Staughton George and others, Laws of the Province of Pennsylvania, p.117.

of England. All profits arising from fines, forfeitures, confiscations etc., such as would belong to the Lord High Admiral in England, were to go to the admiral, or, if there were no admiral, to the Lord Proprietor.¹⁾

It is probable that this act was chiefly due to Lord Baltimore's legal advisers, who were anxious to have an organisation in Maryland which would meet the plantation's needs in an orderly and profitable manner, but it may partly have been the result of the civil strife between Clayborne and the Maryland government which resulted in 1637 in a small naval skirmish. A piracy trial and an inquest followed in the Assembly,²⁾ though usually the provincial court dealt with such cases. In England piracy was tried by special commission but inquests on bodies found below high-water mark or first bridges on navigable rivers were always held by the vice-admiral or his deputy. There were in 1637 two other inquests on drowned men, held in both these cases by the provincial court. Whether it was felt that an admiralty court was needed or whether the bill was inspired by Lord Baltimore's

1) Arch. Md. Proceedings and Acts of the General Assembly, 1637/8-1664, pp.46,47.

2) Ibid., pp.16,18.

legal advisers, who wished to make certain of admiralty profits, cannot be decided, for the admiralty court never functioned. Probably the expense of maintaining a new court was shirked as it was shirked in Virginia, and certainly the judge and registrar would have meant expense, for the fees would not have supported them and grants would have been required to maintain them.

In both Virginia and in Maryland, then, such admiralty cases as arose came before the county or general courts of the colonies, according to the nature of the case. The constitutional changes in Virginia which accompanied the surrender of the Company's charter and the setting up of the royal province did not affect the main characteristics of the judicial system, nor in Maryland did the revolt against Lord Baltimore's rule make any fundamental change. From the first records of the colonies until nearly the close of the period here dealt with admiralty justice was administered by the ordinary courts. It is not easy to give a full account of the kind of business which came before the courts for complete records are available neither in England nor in the

United States . Many of the Virginian records disappeared in the burning of Richmond in 1865 so that only brief notes made by Conway Robinson some years before the Civil War indicate that there was no break in continuity.¹⁾ The Maryland records are in a better state of preservation but are not all available here in England; the printed records of the Council and Provincial Court are, however, sufficient to show that the judicial business of the Provincial court grew in volume without altering greatly in nature. Since the County Court records exist only in manuscript it is not possible to get access to any of them here, and nothing can therefore be done but to refer to the study of admiralty cases before the Virginian County courts, which is to be found in Bruce's Institutional History of Virginia, and to note that in Maryland the county courts had statutory jurisdiction over all civil cases "within the value of 3000 lb of Tobacco and 20£. sterling" and over all criminal cases which did not involve a penalty

1) Virginia Magazine of History and Biography, vol.VIII, articles by Conway Robinson.

of life and limb;¹⁾ and moreover that it was the sheriffs of the counties who were bidden to make arrests and execute orders in those cases which in England would have come before an Admiralty court.

There was then no separate admiralty court either in Virginia or in Maryland in the early days of these colonies. Yet ships and seafaring men came there to trade; merchants loaded their cargoes for ports in Virginia and Maryland, and the planters sent back tobacco in return; contracts, charter-parties and bills of exchange were often drawn up and signed by inhabitants of these two colonies or by their London correspondents or by merchant captains who carried cargoes between the new settlements and England; and ship-board life sometimes led to quarrels with fatal results. Besides the business of ocean commerce, communications in the two colonies inevitably led to disputes which were brought before the courts, and some time must therefore be spent on showing the nature and the amount of work which was done by the courts of Virginia and Maryland and which

- 1) Arch. Md. Proceedings of the Provincial Court, 1649/50-57, p.413. By 1658 this had become the established jurisdiction of the county courts in Maryland. For details of changes in their jurisdiction see Mereness, N. D., Maryland as a Proprietary Province, pp.230-232.

was maritime in character. It is only by examining the work of the courts that they can be shown to have acted in the capacity of admiralty courts without authority granted by statute or by patent.

The bulk of cases which came before the provincial courts of Virginia and Maryland were of course civil cases. A case of breach of charter-party came in 1624 before the Virginian general court when Captain Martin sued Mr. Rastell for sailing to New England before coming to James City and so breaking the charter-party. He had suffered a delay of nine weeks and the court allowed him £60 off the cost of the voyage which amounted to £180.¹⁾ There were three cases about bills before the Maryland Provincial Court, Chynne v Edwynne in 1651, Tilghman v Kedger and a cross-suit of Kedger v Tilghman in 1658.²⁾ The first of these three cases was quickly settled; Chynne was mate on a vessel that was due to sail and was unable to get a bill for 1250 lb of tobacco and cask honoured by the drawer Edwynne. The defendant stated

1) Minutes of the Council and General Court of Colonial Virginia, pp.25,26,32,33.

2) Arch. Md. Proceedings of the Provincial Court, 1649/50-57, pp.140,213,215. Ibid, 1658-1662, pp.213,215.

that he could not pay until the season for striking tobacco and that he had given Chynne bills on other merchants, but the court would not accept it and Edwynne was ordered to pay up.¹⁾ In England this case would probably have been heard in an admiralty court for two reasons; it concerned part of a ship's cargo, and had to be decided quickly as Chynne was due to sail shortly. In Maryland procedure was simplified, and since the provincial court was in session it was possible to dismiss the matter in time. The other two cases would certainly have been heard in an admiralty court if the bill of 1638 had ever come into force, for they involved the delivery of the cargo shipped by Kedger on Tilghman's ship. Although only seven years after the case of Chynne v Edwynne the records of these two later cases are distinctly fuller. This is noticeable in the entries in the minutes and proceedings of cases of all kinds before the courts of both Virginia and Maryland which in the earlier cases are scanty, those in the Virginia records being practically only entries of the judgements²⁾

1) Ibid., p.140.

2) Minutes of the Council and General Court of Colonial Virginia, pp.139, 170.

and in Maryland's brief statements of the arguments used on either side. In the original suit brought by Tilghman not only is the gist of his petition to the council and of Kedger's reply given, but the depositions of two witnesses, an affidavit of a notary public of London and the bill of exchange, drawn by Kedger on his London correspondent in Tilghman's favour, are all entered. The entries are nearly as full in the cross-suit brought by Kedger.¹⁾

These two cases, however, involved transactions in London, a fact which partly accounts for the fullness of the entries. Though the tendency was for fuller records to be kept as years passed, still many of the cases which concerned events that took place in the colonies were entered more briefly, such as suits for wages or payment for hire of boats.²⁾

The cases which deal with damaged cargoes are perhaps more interesting, for they throw light not only on the trade of the colonies but also on the attitude of mind towards the indentured servants. Cases about broken bottles of canary or damaged casks of tobacco³⁾

1) Arch. Md. Proceedings of the Provincial Court, 1658-1662, pp. 213-215.

2) Ibid., 1637-1650, p. 273, Kedger v Draper; p. 307, Rabbin v Brooke; Minutes of the Council and General Court of Colonial Virginia, pp. 9, 177, 239.

tobacco¹⁾ may be interesting as showing the growth of trade and consequent growth of admiralty cases, but the case of Stanley v Tilghman, 1659, illustrates the callousness of the planter towards the indentured servants. Hugh Stanley petitioned the Council for damages on the following grounds: the plaintiff's mother, who presumably lived in England, shipped in 1658 six indentured servants on board Tilghman's ship, he promising to deliver them safe and sound at Patuxent. The boat arrived at Port St. Mary in winter when the harbour was frozen, and Tilghman went ashore. During his absence the six servants, either tired of confinement on board ship or intending to break their bonds, set out across the ice. Disaster followed; the ice gave way and three of the party were drowned. When Stanley found that he was to receive only half his servants he sued Tilghman for damages, just as if the lost servants had been casks of tobacco or cattle. Tilghman proved he had been absent and that the servants had gone without his permission

1) Ibid., pp.139,170; Arch.Md. Proceedings of the Provincial Court, 1637-50, p.197; Ibid., 1649/50, 57, p.350; Ibid., 1658-62, pp.354-356.

and the case was dismissed.¹⁾ There is no comment on the death of the unfortunate men.

Their bodies may never have been recovered or may have been viewed by a local court; there is at any rate no entry of an inquest on them being held by the provincial court, though in 1637, 1648 and in March 1651/2 inquests on bodies found below high water mark were held by the chief court of the colony.²⁾

In Virginia the general court also held an inquest on a boy caught by the tide and drowned.³⁾ An interesting point of law, arising out of the death of Edward Darcy and some others, is shown in the petition addressed to the provincial court of Maryland by Hinson in August, 1659. He had been ordered by Darcy's overseer to recover a certain boat, which must have been drifting near or have been cast up on Kent Island; this he did, handing the boat over to the authorities there. Whether the boat was a deodand or wreck or flotsam is a nice legal point which cannot here be decided. If Darcy and his companions fell over-

1) Arch.Md.Proceedings of the Provincial Court, 1658-62, p.358

2) Ibid., 1637-50, pp.24, 403; Ibid., 1649/50-57, pp.157-159.

3) Minutes of the Council and General Court of Virginia, p.122.

board into salt water the boat was not a deadand, for such accidents were held to be so common at sea that the boat could not be held responsible; if, however, they fell into fresh water the boat could be held to be a deadand. The tide at Kent Island is but slight, the rise being about a bare foot so that the waters of Chesapeake Bay are probably as fresh there as the Thames below London Bridge where a boat in 1367 was held to be a deadand in a case of drowning. Again if the boat were rotten it might be held to be a deadand, but probably this supposition does not apply here, since the boat was salvaged. At any rate it was empty of living creatures and was wreck or flotsam if it were not a deadand, and as wreck, flotsam or deadand found in tidal waters or below high-water mark it was an admiralty droit. Hinson, having salvaged it handed it over to the chief in authority in Kent Island, but receiving no pay for his work, he appealed to the provincial court and got an order that "those that possesse and enjoy the said Boate" should pay him an hundred pounds of tobacco.¹⁾ The governor,

1) Arch. Md. Proceedings of the Provincial Court, 1658-62, p. 314; Jacob's, Law Dictionary, article Deadand; Coroner's Rolls, City of London, 1300-1376, pp. 272, 273.

though admiral, does not seem to have claimed the boat. Besides these cases, there were three which do not fit into any of the categories so far discussed. The first came up in 1639 not long after the edict defining the judicial powers of the council and governor of Maryland. Lord Baltimore wrote to a certain Marmaduke Snow~~about~~ about the administration of the estate of Justinian Snow who had died on the voyage out to Maryland. By the charter the lord proprietor had jurisdiction over all vessels bound for the colony,¹⁾ a jurisdiction which should have been exercised in an admiralty court. Long, the historian of Jamaica and an admiralty judge in that island, held that a nuncupative will made on board ship had to be proved in an admiralty court, and included among his notes of admiralty cases such a case of probate of 1658.²⁾ The other cases which came before the provincial court of Maryland in 1644/5 and 1649 were for slander. John Snow, described as a mariner, sued Michael Duggins for slander,

1) Arch.Md., Proceedings of the Provincial Court, 1637-1650 p.55; Mereness, N.D., Maryland as a Proprietary Province Charter to Lord Baltimore, VII, pp.510, 511.

2) Add.Mss. 12410, f.30.

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claiming 1000 lb of tobacco.¹⁾ He declared that Duggins had publicly accused him of having taken ten pecks of tobacco out of Duggin's locker. It is not stated that this happened on board ship, but presumably it did so. The court did not decide at once but issued a warrant to the sheriff to bring Duggins into court the following week, an order which shows how work that would have been done in England by the admiralty marshal was here done by the officials of the county. Whether the sheriff succeeded or not, or whether Snow won his case, is hidden for there is no further record of the case extant. 1644 was the year of troubles in Maryland and the records are not complete for the period 1641-1645.²⁾ The other case was more serious for the plaintiff was the governor of Maryland, Thomas Greene, who accused Abraham Jonson, a skipper, of slandering not only Greene but the Lord Proprietor. Greene claimed that the public abuse and revilings uttered by Jonson on ship-board in St. George's

1) Arch.Md., Proceedings of the Provincial Court, 1637-1650, p.300.

2) article, Steiner, B.C. in Annual Report, Amer.Hist.Soc. 1901, vol.1, p.217.

River undermined his authority, and won his case, for the court ordered an attachment to be directed to the sheriff for 10,000 lbs of tobacco.¹⁾

Besides civil cases the courts of Virginia and Maryland tried felonies, piracies and prize cases, which in England would have been heard by an admiralty court or a special commission on which a judge of the admiralty had a place. These criminal cases were to a large extent the result of conditions on board ship during the Atlantic voyage. Over-crowding, bad food and shortness of water often made tempers difficult and all too ready to believe in the superstition of the age which sometimes attributed bad weather and contrary winds to witchcraft. In 1654 there were two cases of alleged witchcraft on board ship, and in 1659 one which led to charges of murder being brought in colonial courts. Of the Virginian case little is known, for the records of the council for 1654 are among those which ^{perished} in the fire at Richmond; all that Conway Robinson's list contains is an

1) Arch. Md., Proceedings of the Provincial Court, 1637-50, p.615.

entry that Captain Barrett was tried for executing Catherine Grady as a witch on the high seas. Nor can much more be learnt of the judicial procedure in the Maryland case for the same year, as there is only an entry of two depositions and the protest of the captain, John Bosworth, who was charged with hanging Mary Lee as a witch, that he was not responsible.¹⁾ The third case is recorded more fully and an account of the proceedings can be constructed. The charge of hanging Elizabeth Richardson as a witch was brought by John Washington of Westmoreland County, Virginia, against Edward Prescott, owner of a ship commanded by John Greene. Prescott was making the voyage from England to Maryland in 1658 when somewhere near the "western islands" Greene and the crew seized on the unfortunate woman and accused her of witchcraft. She does not seem to have been subjected to indignities and torture such as Elizabeth Richardson suffered, but was hanged without a trial. Prescott did what he could to save her but Greene was master and he only owner, and with a crew on the point of mutiny a

1) Robinson, C, list in Va. Mag. Hist. and Biog., vol. VIII, p. 162; Arch. Md. Proceedings of the Provincial Council, 1635-67, pp. 306-308.

mere owner was helpless. When Washington brought the charge of murder, the Governor of Maryland, Josias Fendall, had Prescott arrested and took bail for 40,000 lb of tobacco. Fendall then wrote on September 29th 1659 to Washington, notifying him that the trial would take place on October 4th or 5th and that he must appear to prosecute with his witnesses stating that evidence must be given in person as Maryland courts would not recognise depositions made outside the province. Washington would not pursue the charge as he was occupied with the christening of his young son, and had to entertain the gossips and a large company. Prescott appeared and gave his account of the tragedy and produced a Custom House discharge and light-house bills to prove he was not the master but that Greene was in command. No evidence being brought against Prescott the "Board", that is the court, acquitted him.¹⁾ In none of these cases is there any mention of a jury, a curious thing in light of the usual colonial insistence on trial by jury, but, though it had been decided in 1637

1) Arch.Md. Proceedings of the Provincial Court, 1658-62, pp.327, 328.

that the provincial court was to try civil cases by the laws of England and criminal cases by the laws of the province, the bill of 1638 which directed the use of a jury in all criminal cases in the admiralty court had never come into force and trial in both civil and criminal cases in county or provincial court might be without a jury unless required by one or other party.¹⁾ Nor was a jury used in the trial of Judith Catchpole, who was accused in the Autumn of 1656 of murdering her child on the voyage to Maryland. On the evidence of a jury of women impanelled to go into the matter Judith was acquitted of the charge on the grounds that she had never had a child and was insane.²⁾

In piracy and prize the procedure was very similar, juries not being used even in cases which involved the death of someone as in the trial of Thomas Smith in 1637. He was one of the crew of Claiborne's pinnace which had come into conflict with two of Cornwallis's ships off Kent Island. Claiborne was beaten off with loss of

- 1) Arch.Md., Proceedings of the General Assembly, 1637/8 - 1664, pp.46,47; Mereness, N.D., Maryland as a Proprietary Province, p.246.
- 2) Arch.Md., Proceedings of the Provincial Court, 1649/50-59, pp.456-458.

three killed and one taken. Cornwallis and his men were formally acquitted of all guilt in the death of the three men by the Assembly immediately after Smith's trial for piracy. The secretary of Maryland acted as attorney under Baltimore's warrant and began by reading the indictment; Smith pleaded not guilty, and after the depositions had been read by the secretary conducted his own defence. Piracy was a criminal charge and the prisoner was therefore not allowed a lawyer. After the secretary's reply to Smith's defence the Assembly voted, eighteen that he was guilty and one that he was not guilty three not voting on the grounds that they had not heard all the evidence. Among those who voted guilty were Thomas Cornwallis, Edward Fleet, John Nevill and Cuthbert Fenwick. All these must have taken part in the fight for Thomas Cornwallis was acquitted of complicity in the deaths of the three men who were killed, while the other three gave the testimony which acquitted him; unless they had been present at the fight they could not have known what happened. After the votes had been taken

the president pronounced sentence of death, to which Smith replied by pleading his clergy. This was refused partly because it was put forward too late, and partly because benefit of clergy could not be claimed by a pirate.¹⁾

In this trial the English law was followed in this point but otherwise the trial was not in accordance with the custom of setting up a special commission.²⁾

The other trials for piracy in Virginia and Maryland were before the general and provincial courts. There were naturally few for neither Virginia nor Maryland lay near enough to the West Indies to attract the buccaneers in large numbers; occasionally however a vessel strayed northwards as happened in 1625. Whether the council was called upon to try fifteen pirates or to condemn a prize, it is hard to say, but on the whole they decided to treat the case as one of prize. A leaky vessel manned by a crew of fifteen arrived in the July of 1625 at Virginia; being unable to account for themselves properly the captain and his men were brought before the general court on suspicion of piracy. They told a complicated story

1) 27 Hen.VIII C.4.

2) Arch. Md., Proceedings of the General Assembly, 1637/8-1664, pp.16,17.

that was typical of the problems that privateering brought into the admiralty courts. The Black Bess of Flushing, Captain Powell master, had sailed with letters of marque from the States General, and cruising in the West Indies captured a frigate and a pinnace. There the witnesses maintained that Captain Powell tried to force them to turn pirate, but they refused and forsook the Black Bess and sailed away in the frigate. For some time they cruised in the West Indies, and, though the letters of marque were presumably in the Black Bess, took a frigate laden with turtles and water as she lay by the shore, her crew being on land. Turtles and water were not a valuable cargo and two ships were more than they could manage, so the last capture was soon after handed over to a Spanish ship in return for a pilot, who brought them to Virginia, in spite of leaks. After some discussion the Council decided that the crew should be placed as servants, and Captain Francis West, a councillor and a member of the court, bought the ship for fourteen cwts. of tobacco.¹⁾

As in New England the Civil War and the Commonwealth

1) Minutes of the Council and General Court of Virginia,
pp. 66-68.

had an effect on Maryland by producing prize and privateering cases, but in Maryland the civil war had a further effect in stirring up the protestants in the province to rise against the Catholic proprietor, and to seize the government, which they controlled for a short time. The revolting party could count on the discontented Claibourne and on Thomas Cornwallis, one of the most important men in the colony; they were naturally only too glad to get help from a Parliamentary privateer 'The Reformation' of London, which arrived towards the end of 1643. Richard Ingle, the master of the vessel, was armed with letters of marque from the parliament, and intended to make a good profit on the voyage. When he reached Maryland he found that Leonard Calvert, the governor, had secured a commission from the king at Oxford to arrest all ships sailing from Parliamentary ports. Ingle's first attempts to reap a profit from the dissidents of Maryland came to nothing, for Calvert had the 'Reformation' arrested on the grounds that she was a London ship and therefore hostile to the king. Ingle himself was arrested for speaking treason against the king and he and

his ship were put into the custody of Cornwallis. The discontented party seems to have felt that Ingle might be a help to them. Cornwallis therefore helped Ingle to escape to England. After having obtained a certificate from the Admiralty Court that his ship had been seized by Governor Calvert, Ingle prepared a second venture for Maryland. In 1644 or 1645 he reached the province a second time and joined his fortunes with Cornwallis's party, and succeeded in seizing much plunder, including a pinnace, which belonged to Guthbert Fenwick. It was later maintained that the master of the pinnace, one Andrew Monroe, not only connived at the capture but also served Ingle subsequently in command of the same boat. By the autumn of 1645 Ingle was back in England with Cornwallis, who finding his position in Maryland untenable was petitioning the Council to interfere in Maryland in favour of the Protestant party.¹⁾ There are no records of the proceedings against the "Reformation" of London, which must certainly have come before the council if the

1) Arch. Md., Proceedings of the Council, 1636-67, pp.164, 165,167; Arch. Md., Proceedings of the Provincial Court, 1649/50-57, p.12; Mereness, N.D., Maryland as a Proprietary Province, pp.18,19,20.

vessel had ever been condemned, but there is a deposition made before the Provincial court in 1650 about the taking of Fenwick's pinnace, which looks as though an attempt at recovery was then being made.¹⁾

It was not until the Commonwealth government was established and had embarked on the commercial policy directed against the Netherlands that there were any prize and piracy cases brought before the Maryland Courts. Breaches of the newly passed navigation act and the Dutch war made good excuses for captures and for pleading that a contract could not be carried out. The case of *Metcalf v Skipper Derrickson*, though not a prize case, shows the length to which privateers and men-of-war would go. Derrickson had brought his ship into Accomack safely, but before he could discharge the cargo, a Dutch ship sailed into harbour and carried his vessel off as a prize. Metcalf sued Derrickson for £10 due on a bill to be paid at the end of the voyage, and a jury decided that Derrickson must pay 1600 lbs of tobacco and cask and costs

1) Arch. Md., Proceedings of the Provincial Court, 1649/50-57, p.12.

as he had not lost his ship through any casualty of the sea.¹⁾ On the English side sailors often were as bold and far more outrageous in their behaviour, for on the smallest excuse they not only seized vessels but sometimes carried them off to other ports for condemnation. When such offenders were brought before the provincial court they were dealt with rapidly and sometimes severely. On 6 Feb 1653 the Governor and three councillors heard and decided the case of Johnson and Adams v Yardley and Batts. Colonel Yardley and Nathaniel Batts had seized a vessel in the Potomac River, within the limits of the province, on pretence that she had come from trading in the Dutch colonies and so had contravened the Navigation Act and was therefore lawful prize. The court would not allow this view since neither Yardley nor Batts had any warrant for taking action, and a heavy fine was imposed in addition to "treble satisfaction" to the plaintiffs.²⁾

This was, however, the heaviest punishment dealt out by the provincial court. Certain pirates, brought up

1) Arch. Md., Proceedings of the Provincial Court, 1649/50-57, pp. 162, 166.

2) Arch. Md., Proceedings of the Provincial Court, 1649/50-57, pp. 312, 313.

for trial in 1659, had undoubtedly captured a Dutch ship in Barbados reads on the pretext that she was laden with Jew's goods and had traded in the island against the Navigation Act; they had marooned the captain and some of the crew in Antigua and had come without the ship's papers to Maryland, hoping to sell the vessel there. The matter was first discussed by the Provincial Court, but the following day, 1 June 1659, similar entries about the case were made in the records of both Council and Provincial Court, the same men being present at each. It only shows the close connection between the two bodies. It was decided that there was not sufficient evidence to prove the vessel was a prize and that any possible offence had been committed outside Lord Baltimore's jurisdiction and therefore could not be tried by the courts of Maryland. So the ship and cargo was confiscated to the use of the Lord Proprietor, unless claimed within a year and a day, and the pirates were banished the colony. Baltimore was well content for he wrote approving what had been done, and only ordering no further action except

the sale of perishable cargo.¹⁾

The Maryland Council was obviously careful of interfering in matters beyond the powers allotted by the charter, for the Governor refused to deal with another prize case. A London ship, the Mayflower, Captain Thomas Webber master, captured a Spanish vessel, the Maid of Gaunt, riding in St. George's River in 1653. Webber acted apparently under a warrant from the governor of Virginia, and this may have been the reason why governor Stone would not meddle in the matter. He declared that he had no authority to settle the question but would leave it to the Court of Admiralty in England where, he was given to understand, it should be determined. Since a Maryland merchant Simon Oversey had shipped goods on the Maid of Gaunt, Stone was willing to go so far as to give a certificate of their value and also ^{to certify} that Webber had carried them away without submitting to trial. This last admission looks as if the governor had declared he would leave the case to the English Admiralty Court because he could not get Webber to recognise his juris-

1) Arch. Md., Proceedings of the Council, 1636-67, pp.360-362; Arch. Md., Proceedings of the Provincial Court, 1658-62, pp.306-310.

diction.¹⁾

When justice could not be obtained in the colonies the aggrieved parties sometimes petitioned the Council in England or brought their cases in an English court. At times it was more convenient to do this because the parties in the case were in England and could therefore be brought into court more quickly than if the case were tried in the court of the colony in which the breach of contract or other dispute had arisen. Thus cases which concerned the Virginia Company of London came before English courts and not Virginian courts. When the Virginia Company sued Wye in the Admiralty court about a voyage he had not carried out according to instructions, Nicholas Ferrar was one of the people concerned. Though the voyage was to Virginia it was obviously more practical to sue Wye in London where witnesses to Wye's engagement and instructions were available.²⁾ Similarly the following case of Vassall v Kingswell came before the English court because one of the parties left Virginia and return-

- 1) Arch.Md., Proceedings of the Council of Maryland, 1636-67, pp.297,298,305,306; cf. supra chap.IV, p.15. The petition from Massachusetts in the case of the "Mary Rose".
- 2) H.C.A. Libels 79, nos.121,122. These are two interrogatories; the libel is probably in Libels 78, but the file cannot be seen owing to its condition.

ed to London while the dispute was raging. Owing to failure to discover the libel in this case the exact charges brought by Vassall can only be surmised, but almost certainly they were concerned with Kingswell's failure to pay his share of the cost of the voyage. About 1630 Vassall was interested in the idea of founding a colony in the country south of Virginia, sometimes called Carolana and sometimes Florida. In 1632 he had sent out the "George" at his own cost to explore the coast and had learnt of the St. Helena River, which was said to be fifteen feet deep. It seemed a suitable place for the proposed colony and Vassall began to look for associates. Kingswell agreed to join in the project and an expedition was prepared to sail in the "Thomas" and the "Mayflower" with two smaller ships, the pinnace "Henry" and the "George". Vassall, who owned the "Mayflower",¹⁾ did not want to use the ship as her draught was sixteen feet, but Kingswell refused to sail in any other. Finally it was agreed at Vassall's house in St. Mary Axe that Kingswell, his wife and company should all sail in

1) H.C.A.libels 90, no.124, Vassall con Lovat.

the "Mayflower" to Virginia and winter there, for Mrs. Kingswell was expecting her confinement before spring. Meanwhile the "George" was to reconnoitre further and select a spot for the proposed colony. Either on the voyage out or in Virginia Kingswell must have decided to break with Vassall for in the following spring he and his company returned to London. Since all the interrogatories in the case are about the amount of food and drink issued to the passengers on the Mayflower, it is probable that Kingswell was trying to evade paying for the passage out. If he had had a real grievance he could have sued the captain of the Mayflower before the General Court in Virginia, but it was Vassall who sued Kingswell on his return to London.¹⁾

These two cases came naturally before the High Court of Admiralty, but there were other cases which came before that court or were brought by petition to the notice of the Council because justice could not be obtained in the colonies. Of such was the case brought by Richard Orchard, master of the Dove of London, against Lord

1) H.C.A. Interrogatories nos. 138, 188, 189, 190; H.C.A. Libels⁹⁰, no. 34.

Baltimore, Leonard Calvert, Jerome Lawley, Thomas Cornwallis and John Saunders. The year after Baltimore had received his grant of Maryland he made ready with the other defendants to found the colony. Among other ships prepared for the first voyage was the pinnace, "the Dove" which they jointly bought. Richard Orchard was engaged as master for twelve months, and in accordance with the terms of his agreement he hired his crew, Samuel Lawson mate, Richard Kenton boatswain, John Games gunner, John Curle and Nicholas Perrie hands, and a boy, who was to be transported free as the master's servant and to be paid according to his deserts. On 22 November 1633 Leonard Calvert, Jerome Hawley and Thomas Cornwallis sailed for Maryland in the "Ark", the "Dove" setting out with them. In case of separation the ships were to make rendezvous at St. Kitts, but after losing touch with the "Ark" Orchard did not lay his course direct for St. Kitts but called at Barbados, Montserrat and Nevis on the way, spending some weeks in the islands on his own purposes and running risk of capture by Spanish privateers. After his arrival at Maryland, Orchard was sent in June 1634 to Massachusetts

Bay probably to fetch provisions for he was ordered to return directly. Orchard's idea of a direct return from Massachusetts Bay was to call at Virginia, which he reached in the middle of November. There he found Leonard Calvert and Jerome Hawley, who were greatly incensed with him for his tardiness and disobedience. By this time twelve months had elapsed since Orchard and the crew of the "Dove" had been engaged, and their wages were now due. When, therefore, Calvert and Hawley went on board the "Dove" and ordered Orchard to sail at once for Maryland, he refused to obey unless his wages were paid. It is unlikely that either Calvert or Hawley had the necessary sum with them, for the total wages bill for the year was over £130, nor were they willing to pay it to a master who had disobeyed orders twice over. At any rate they did not pay the wages and Orchard and the crew went on shore, leaving the pinnace unwatched. While he was on shore Orchard tried to get the "Dove" arrested in a suit for wages, but was unsuccessful, probably because the Virginia Council was unwilling to meddle in a Maryland matter. Having failed to get justice in Virginia,

Orchard returned to England, for he knew that in Maryland he would not be able to win a suit for wages in a court presided over by Leonard Calvert, the governor and admiral of Maryland. Hence a suit for wages against the owners of the "Dove" in the High Court of Admiralty, sitting at London.¹⁾

Sometimes cases were referred to the judge of the Admiralty Court by the Council, as for example the petition of Peter Spencer, who complained in 1643 that the master of the ship, on which he had served during a voyage to Virginia, had put him to torture on a charge of theft. Blackman, the master, had missed a bottle of strong waters and had cruelly whipped the ship's boy till he accused Spencer. He then tortured Spencer till the passengers interfered. This case should naturally have come before a Virginian court, but owing to the loss of the records of the General Court it is impossible to say if Spencer tried to get redress there or no.²⁾ Nor is it clear why Spencer preferred his petition directly to the council instead of bringing a case in the High Court of Admiralty.

1) H.C.A. Interrogatories 11, no. 323; Libels 91, no. 114.

2) Cal. St. Pap. Col. A. and W. I. Add. 1570-1674, no. 7160.

whither the matter was properly referred; possibly Spencer's course of action was due to the expense of a lawsuit. The more usual course was followed by Captain Howe, whose petition, presented 6 June 1654, shows that he had failed to get justice both in Virginia and in England, and that the Council was his last hope. Captain Daniel Howe of New England stated that he had been cast away between New England and Virginia and that he had bought a vessel called the Hopewell at New Amsterdam. When he reached Virginia in the Hopewell, the ship was arrested by Peter Wraxall at the command of Lt.Col. Edm. Scarborough on the pretext that she was a Dutch ship, breaking the Navigation Act. The matter came before the Governor and Council, who allowed Howe to sail for England, having given a bond of a £1000 that he would appear before the Council of State or the Admiralty Court and abide by the decision given there about the condemnation of the Hopewell as a prize. When Howe went to the Admiralty court he found Wraxall had already procured a condemnation, although he agreed in Virginia to await the arrival of Howe. Upon advice Howe took the case to the Court of

Delegates but could get no hearing there. This was in June but it was not until November that the Council acted, when Howe's petition was forwarded to the Commissioners for the Admiralty and Navy with an order for speedy decision as it was two years since the trouble over the Hopewell had arisen.¹⁾

This account of the business that came before the courts of Virginia and Maryland shows that in these colonies admiralty jurisdiction was grafted on to the existing judicial system. As the volume of work increased it was felt, at least in Virginia, that the position needed regularising, and legislation was passed first to empower the county courts to hear maritime cases, and then March 1659/60 to give the governor and council the full powers of an admiralty court.²⁾ These two statutes only legalised the earlier practice of the Virginian courts and thus tended to maintain the old system. To set up admiralty courts would have meant expense which the colony grudged, and apparently the existing

1) Cal.St.Pap.Col.A.and W.I. Add. 1570-1674, no. 1049.

2) Hening, Statutes at Large, Virginia, vol.I, pp.466,537.

courts dealt successfully with the work. In Maryland the situation was very similar, except that the provincial court had the colony's admiral as its president. At any rate neither Virginia nor Maryland apparently felt the need of a separate admiralty court, held by a trained civilian and using a special code, even when after the Restoration the tightening up of the Navigation Acts increased the number of cases that dealt with the comings and goings of ships. Both colonies replied to the enquiries of the Committee of Trade and Plantations that there was no special admiralty court, Baltimore saying the Provincial Court had cognizance of admiralty causes, and Governor Berkeley that Virginia had no need of such a court.¹⁾ So it was that in these two colonies the erection of admiralty courts had to be the work of the central government, for the ordinary commercial life of the colonies was not such as to lead the colonists to feel the need for such courts in addition to county and provincial courts. The story then of the organisation of the admiralty system in

1) Arch. Md., Proceedings of the Provincial Council, 1676-81, p.264: Col.Rep.

and
Virginia/Maryland belongs to the story of the general
organization which was begun under James, Duke of York,
and must be told in a later chapter.

CHAPTER VI

THE GROWTH OF VICE-ADMIRALTY JURISDICTION IN BERMUDA

The problems of Bermuda were different in many respects from those of the mainland colonies. In the case of Virginia and Maryland both were colonies with a considerable trade in tobacco, and both had settlements on the shores of tidal rivers. The nature of their problems had therefore led to the council and county courts of each colony acting within their proper sphere as vice-admiralty courts. Bermuda, a group of rock-bound islands, was very different from Virginia and Maryland; it differed too from the northern colonies of Newfoundland and New England. In the north Atlantic the fisheries were very valuable, and could obviously be made a great source of revenue if properly administered. It was therefore the fisheries that caused the first attempts to establish vice-admiralty jurisdiction in New England and Newfoundland. In Bermuda the whale fishery was the only fishery that

might prove a possible source of commercial profit, but though attempts were made from time to time to organise whaling enterprises, little profit was made. The coastal fisheries were really only of importance as a source of food for the population of Bermuda, a very useful source in the hungry days of the infant colony, worth regulating and conserving, but not of commercial importance. The fisheries therefore were not in Bermuda the cause of the development of vice-admiralty jurisdiction, and the origin of the institution must be sought elsewhere.

The position of Bermuda on the sailing route to Virginia and the West Indies made the islands an important port of call and the Bermuda Company anticipated a great deal of mercantile traffic. This anticipated traffic might easily lead to a demand for a court which could settle disputes about charter-parties, wages and other possible causes of trouble between shippers, masters and crews. Besides this more peaceful cause of the development of the vice-admiralty court of Bermuda, there were other causes of a more violent nature. The rocky reefs that surround the islands were responsible for many

wrecks, and the needs of the islanders were so great that a helpless ship was frequently stripped bare, and almost torn to pieces by the colonists of Bermuda. A vice-admiralty court was necessary to protect the interests both of the survivors and of the Company which had the right to the profits on wreckages as well as on flotsam, jetsam and lagon. But reefs and tempests were not the only risks that merchantmen had to run in the seventeenth century. Down to the treaty of Madrid¹⁾ there was avowedly no peace beyond the line. After 1630 though in theory there was peace on the high seas, in practice privateering continued unchecked. Any one could, by the form of declaring the amount of losses caused by enemy shipping which could not be recovered by legal process, obtain a letter of marque or reprisal, the latter being more limited in power. The captures made by ships under letters of marque or reprisal had under the terms of the commission to be brought into an admiralty court and condemned as prizes. The company of Bermuda must have hoped not only that their own vessels would make many captures but that other privateers would call at Bermuda

1) 1630. ed. Davenport, F.O., European treaties bearing on the History of the United States and its Dependencies to 1648, p. 310.

to get their prizes condemned there. Wreck and privateering, as well as the ordinary business of sea-faring people seemed likely to bring work into a court of vice-admiralty at Bermuda.

In 1614 the Virginia Company's charter, which two years earlier had been extended to include Bermuda within its jurisdiction by sea and land, was resigned into the king's hands. The following year a charter was issued to the Somers Islands' Company with jurisdiction by land and sea ¹⁾. The governor and council were made the chief court with power to transact business both civil and criminal ²⁾. No special court was set up to try admiralty cases, for as in Virginia and Massachusetts Bay the council was competent to decide all cases. In tracing the growth of vice-admiralty jurisdiction in Bermuda the starting point is the governor and council, a body which was not trained in law, especially in the civil law which was used in the admiralty courts. The council moreover was a legislative, administrative and ex-

- 1) Lefroy. Memorials of Bermuda vol. I pp.84,85. The Somers Islands was the other name for Bermuda.
- 2) Orders and Constitutions, partly collected out of his Majesties Letters Patents....Ordained upon Mature deliberation by the Governor and Company of the Summer Islands. pp.46,47.

executive body. It might make laws one day about the size of nets to be used in coastal fishing, and the next day might try a case of breach of such an act. To trace the growth of a vice-admiralty court from such a body is not unlike tracing the divergence of one of the greater English courts, such as the High Court of Admiralty, from the council. As the volume of business grew, the need for a special court became greater, till at last the council ceased to combine special admiralty functions with its more general activities. In Bermuda this point was reached after the Restoration, when the great organisation of the vice-admiralty system began under James Duke of York. Why that organisation was necessary can be seen in the history of Bermuda.

During the early years of the colony the council did not have much admiralty business to transact. Some cases of theft probably committed below high water mark came before them. The conditions of life at Bermuda seem to have been hard, especially for the indentured servants and there are several mentions in the records of men stealing boats and setting sail for Virginia. In

England such cases might have come before a vice-admiralty court, for the boats almost certainly lay below high water mark and so within the jurisdiction of the admiral. In Bermuda they were tried at the general gaol delivery by common law, and before a jury.¹⁾ These are the only cases other than wreck or prize which have been preserved in the printed records of Bermuda for this early period, although there were probably others either of the same sort or connected with breaches of the acts regulating fishing for turtles and pilchards.²⁾ Nor is there much record of prize work. Buckingham as lord high admiral issued a letter of marque to the adventurers in the Summer Island pinnace, but there is no evidence that any prizes were brought into Bermuda for condemnation. The only hints that the governor and council exercised their powers as a prize court are to be found in Smith's General History of Virginia, New England and the Summer Isles, and in the Records of the Virginia Company of London. Captain John Smith describes how in May 1617 Powell came in the

1) Memorials of Bermuda vol. I pp.366, 367, 392.

2) Ibid pp. 172, 173, 411.

Hopewell to Bermuda on his way home from the West Indies, bringing with him three frigates which he had captured. "Fair weather the Gouvernor made with Powell, till he had got all the goods into his owne possession, and then called Powell to a strict account for doing such an unwarrantable act; much a doe then was betwixt taker and receiver; but Powell was glad to be excused to answer it in England, leauing all hee had taken behinde him in the Isles." Powell apparently had no proper commission as a privateer, having gone out on a trading voyage, and only taking the frigates when trade failed; and the governor confiscated the frigates on the grounds that they had been taken by piratical acts. In England Powell would have stood his trial for piracy.¹⁾ It was to Bermuda that the "Treasurer" came from Virginia on her return from the privateering expedition on which Argall had sent her. Finding that Argall had been recalled to England and that an hostile faction was in power, the master of the "Treasurer" carried the booty he had won under a letter of marque from the Duke of Savoy to the Bermudas, where he placed a number of negroes,

1) Capt. John Smith, ed. Arber, The General History of Virginia, New England and the Summer Isles etc., Lib V, p. 660.

who had been captured during the cruise, on the Earl of Warwick's lands. As prize goods the negroes and the rest of the cargo should have been condemned by the governor and council, and the proceeds divided between the crew, the adventurer of the ship, and the Company of Virginia who owned the rights of admiralty, and could therefore claim a tenth of all prizes. No record remains of the Council having condemned the goods, but the mariners complained in court that they were defrauded of their share. The governor of Bermudas must have known of the business and probably gave the master of the Treasurer a certificate of condemnation.¹⁾

Since Bermuda owed its settlement to the wreck of Sir George Summer's expedition to Virginia, it was only fitting that cases of wreck should form the most important part of admiralty business throughout the early history of the colony. As has been said Bermuda was not only an important port of call on West Indian voyages but also for many of the Virginia bound vessels, even after Argall had proved the success of his more northerly route. But

1) Records, Virginia Company^{of London}, vol. 11, p. 402.

though the water and fresh food to be found in the islands were essential, yet ships ran risks in making Bermuda for both submerged and partially covered reefs exist as far out as ten miles. Wreck was of course an admiralty droit, and as such had been granted to the Company of the Somers Islands. The governor was expected to collect all the profits arising from wrecks and to prevent the people of Bermuda from spoiling cast away vessels. Quite early it became clear that the governor and council could not do this and the records of Bermuda are full of enquiries from the Company and answers from the governor about this or that vessel. The matter first became urgent in 1621 when a Spanish vessel, laden with treasure, was cast away at Bermuda. On Feb. 6, 1621/2, Gendemar the Spanish ambassador complained to the Company that the wreck had been seized and the passengers pillaged. The Company replied speedily saying that the vessel had broken up on the rocks, and that after search 2140 had been saved and handed over to the captain.¹⁾ Smith however says that the Spanish captain made a deed of gift of his vessel

1) Memorials of Bermuda vol. I, pp. 240, 241.

to the governor.¹⁾ The matter did not rest there and Governor Butler had some correspondence with Somerset tribe about salvaging the wreck. In November 1622 a commission was sent to Bermuda for an enquiry into the disposal of the wreck. The Spanish war however broke out before anything could be done, and presumably those who had saved anything from the wreck kept it. At any rate no more is heard of this vessel.²⁾

There must have been further cases of wrecking although the records are silent about this side of admiralty business for the next sixteen years, for in 1638 a law was passed "for guiding recoverers of wrecks". The text has not survived but the law must have been based on the usual principles that a wreck must have no survivors if it is to be condemned, that it must be brought before a court and properly valued and the price realised by its sale divided between the salvors and the holder of the admiralty droits.³⁾ The law did not apparently mend the Customs of Bermuda. On Oct. 13, 1644, the earl of Warwick, who was lord high admiral, wrote as follows:- "We have just

1) Smith, General History Lib. V, p.681.

2) Memorials of Bermuda vol.I, pp.241-255, 266, 267.

3) Ibid. vol.II, p.593.

cause to complain of the wrong we have suffered in the case of wrecks, and not only by mere private persons but also by Public Officers and truly we are much troubled to find so great injustice among you, as might occasion us to invoke¹⁾ that law, which in great favour, allows a Society to the Recoverers, we shall expect and hope for better Accompts than yet we have received, both of that which lately happened and what hereafter^{may} ²⁾ What had lately happened was the wreck of a Spanish treasure ship in 1642.³⁾ On receiving this letter Governor Foster took steps to recover the silver and other valuable goods pillaged from the ship. Richard Merret, Edward Burges, Edward Hinson and Robert Pulford were found in possession of Spanish goods and forced to give them up. They sued the governor hoping to recover the goods, and won the case, for the civil war had weakened the control of the Company of the Somers Islands over the colony, and it was not until three years later that Foster was able to get the Company to move on his behalf. On Sept. 1, 1647, the general court of the Somers Islands Company quashed the verdict against Foster, and gave him leave to try to recover damages at

1) Possibly read revoke instead.

2) Memorials of Bermuda, vol. I, p. 588.

3) Ibid. vol. I, p. 578.

law from his four opponents.¹⁾ The next episode came in May 1649 when the Gouverneur "produced the goods and treasure remaining in his hands and divided it, the one halfe for the Company the other halfe for himselfe." Some of the treasure had been in his house, and of this he took a third. The January following the Committee directed Foster to compel a Captain Turner to yield up "that part of the late wreckethat came into his hands", and to hold an enquiry into the state of the wreck, and presumably into the whereabouts of the treasure and cargo still unaccounted for.²⁾ Foster apparently had no success for he replied that he had seized Turner's property but found no Spanish goods, and that everyone answered the Commission of enquiry³⁾ with a plea that they had accounted to the earlier commission. The colonists seem to have felt that they need not blame themselves for their conduct towards the Spaniards, for when a grand jury in 1652 presented the practice of wrecking at the Assizes, they contrasted this scandalous behaviour with the "Christian like dealing" meted out to the

1) Ibid. vol. I, p.627, 628.

2) Memorials of Bermuda. vol.II, p.5.

3) Ibid. vol.II, p.13.

Spanish ship.

The story of these two Spanish wrecks has been told in detail because the value of the ships was great and the Company was correspondingly anxious to make sure of their dues. But these two wrecks were by no means the only ones, and the Company expected the governor to be equally careful in small matters. During the next twenty years, 1650-1670, wrecks were numerous and, as the records have survived more often than during the earlier years, it is possible to learn details of the sad fates of the "Hopeful Luck" cast away before June 1655, of the "Eagle" and the "Anne" both lost in 1658, of the Virginia merchant wrecked in 1661, of the "Truelove" in 1670, as well as of a nameless ship bound for Virginia with beef and hogs which was lost about 1660. Almost all these ships were presented as wrecks and in almost every case the governor had to recover goods which had been pillaged by gangs of pretended rescuers. But proclamations and prosecutions had little effect and one wreck after another was plundered. The governor tried in vain to recover the goods seized from the wrecks; he insisted that the shipwrecked crew of the "Anne" should be maintained by the wreckers and ordered

a distraint on their goods to meet the expenses.¹⁾ But all was in vain and wrecking continued.

It was not only with wrecks at Bermuda that the Governor was concerned. Apparently the Bahamas were regarded as being within his jurisdiction, for in 1656, upon information received from some Spaniards rescued at sea, the council ordered Captain Richard Dockyer to go to the Bahamas to save a Spanish treasure ship "for the benefit of the Lord Protector, the honorable company and of the recoverers that shall adventure therein".²⁾

In 1658 the council was considering attestations in a case of dispute over the division of treasure salvaged at Abaco in the Bahamas by another expedition.³⁾

In all these cases of wreck the council acted as the court, and the governor as the president and executive official, the terms vice-admiralty court and vice-admiral not being used before 1670. There is no attempt as in Newfoundland or New England to transfer an English institution bodily to the colony. The procedure before the court was not even according to civil law. It is not

1) Memorials of Bermuda vol.II, pp.111, 115.

2) Ibid. vol.II, p.77, 78.

3) Ibid. vol.II, pp.112, 113.

until the case of Alice How in 1652 that there seems to have been any idea that the ordinary courts could not try offenses committed outside the body of a county. She was presented at the Assizes for thefts committed on board the "King of Poland" outward bound from England. The grand inquest found a true bill, "but because it was not cleare by law that being done at sea, she was now punishable on land yt was suspended".¹⁾ Yet in 1661 the Assizes were still trying offences committed at sea for William Raughton was accused by Captain Richard Jenyns with having said about four years before when on the "Loyalty" that the children of Charles I were bastards, and Raughton only escaped the penalty of tresson by pleading the act of indemnity.²⁾ In 1664 the Assizes again tried a criminal case which in England would have been heard in an admiralty court. A negro, Black Peter, stole a boat. As there are no rivers in Bermuda, the boat must almost certainly have been kept within the ebb and flow of the tide. Black Peter refused to plead, but in spite of that he was condemned and executed.

1) Memorials of Bermuda, vol.II, p.26.

2) Ibid. vol.II, p.162.

Curiously there is no mention of peine forte ^e & dure which was usually inflicted to force a man to put himself on his country; Peter was apparently condemned without pleading either voluntarily or under compulsion.¹⁾

As well as these criminal cases the council and the Assizes both tried civil cases and received presentments which were maritime in character. A grand jury in 1652 presented a ship to the Assizes for refusing to sell salt by water measure and for selling on board and not on land.²⁾ In 1656 the council heard a dispute about damages and average between Richard Locker, master of the "Rebecca and Anne", and the passengers whom he had carried to Eleutheria.³⁾ The case brought by Solomon Robinson against the "Blessing" and her cargo was heard on May 6, 1668 by a "Pipepowder" court held at St. Georges. The court consisted of Captain Seymer who was governor, the sheriff, the secretary and five councillors with a jury of thirteen. The plaintiff was permitted to keep the "Blessing" until the defendant had paid a debt of £81 . 8 . 9.⁴⁾ This case

1) Memorials of Bermuda, vol. II, pp. 217-219.

2) Ibid. vol. II, p. 31.

3) Ibid. vol. II, p. 86.

4) Ibid. vol. II, pp. 262, 263.

is significant. A court of pie-powder would certainly use merchant law, which permitted actions ad rem, and was an integral part of the law used in the admiralty courts. Robinson v the "Blessing" marks a notable step in the evolution of a vice-admiralty court out of the council in Bermuda.¹⁾

Two years later the need for an admiralty court distinct from the council became even clearer. The "Truelove" of Bristol was wrecked on Bermuda on Dec. 6 1670. Two cases arose out of this wreck which proved that the existing system was not sufficiently defined to be satisfactory. Jeremiah Burrows, who had salvaged goods from the "Truelove", brought an action of debt and charges for goods removed out of the wreck against William Shepard, master of the "Truelove". In reply Shepard had Burrows arrested for concealing goods taken from the wreck. The cases came before the council on Jan. 19 1670/1, and Burrows tried to get them transferred to the assizes where he could be sure of a sympathetic jury. Shepard's lawyer appealed to Lex Mercatoria²⁾ and other

1) Memorials of Bermuda vol.II, pp.262, 263.

2) Malynes, Lex Mercatoria, 1622, reprinted several times in the seventeenth century.

authorities, claiming that in cases arising out of wrecks a speedy judgement was obligatory. The court concluded that as Lex Mercatoria had been sent to them by the company its authority could not be questioned, and Burrows failed to get the cases transferred. He was non-suited and had to pay £208 damages for concealing goods belonging to the "Truelove". The court then issued strict regulations that all who went to help a wreck should forward all the goods and men rescued to St. Georges as soon as possible; that the ship's tackle was not to be destroyed, and that two men in each tribe were to be appointed to go to the help of distressed ships.¹⁾

The Dutch were raised the question of prize jurisdiction in Bermuda, and here apparently the lord high admiral did not consider the governor and council as qualified to act. When war broke out in 1665 the company was ordered to seize all Dutch ships and bring them in to judgement, but nothing is said of their own court at Bermuda being competent to condemn them; in fact the silence implies that the ordinary admiralty courts, either

1) Memorials of Bermuda, vol.II, pp.332, 333.

in England or in Jamaica, where a vice-admiralty court for the American seas had recently been established,¹⁾ were intended.²⁾ The case of the Tortola negroes however seems to show that the governor did act very much as a vice-admiral of the coast would have acted in England.³⁾ Shortly after the declaration of war the "Charles" sailed into St. Georges with a small vessel and sixty-seven negroes as her prize. The captain, John Wentworth, hearing of the outbreak of war^{had} seized a ship and her cargo of negroes at Tortola in the Virgin Islands on the pretext that the island was a Dutch possession. He brought them in to Bermuda to be condemned, but confessed that he had no commission as a privateer and had relied on the state of war to justify his act, tendering seven negroes and a boy as the admiral's tenths. The governor and council were rather anxious about their own position and required security that Wentworth would guarantee them against possible damages. This the captain could not do, so he surrendered himself into custody, begging that the

1) H.C.A. Vice-admiralty proceedings 59.

2) Memorials of Bermuda vol. II, p. 226.

3) E.H.R. vols. XXV, XXVI, articles by E.G. Marsden on English Prize Law.

"Charles" might not be stayed in harbour to his ruin. Meanwhile the governor of Tortola complained to the governor of Bermuda, stating that Tortola was not Dutch but neutral. On Feb. 6, 1667-8 the company wrote to the governor, Captain Samuel Whaley, about the Tortola negroes, ordering him to find out by what authority Wentworth had acted, how the negroes had been disposed of, and especially what had become of the admiral's share. These seven men and the boy were to be placed in the service of the company's officers, and the rest of the negroes were to be kept at Bermuda. A year later the company had learnt that Wentworth had had no commission and ordered the seventy negroes to be confiscated as a royalty belonging to the company. By this time the negroes had been disposed of and as no record of the sales had been kept and no tribe would give information about the purchasers the company lost their sixty slaves.¹⁾

The efforts made by the duke of York at this time to organise colonial vice-admiralty jurisdiction were possibly having an effect on the company, for there are various letters to the governor of Bermuda with instructions about

1) Memorials of Bermuda vol. II, pp. 231, 260, 276, 351-356, 635.

accounting more carefully for the dues from wrecks,¹⁾ stating that the sheriff ought to be obeyed both by land and sea "so far as our Jurisdictions do extend"²⁾, and inquiring into a grant to search for wrecks issued by the lord high admiral to Edmund Custis, which it was thought infringed the rights of the company.³⁾ In 1676 the committee of the Privy Council for Trade and Plantations drew up a questionnaire to be circulated to the governors of the colonies. One of these questions was about the existence and organisation of the admiralty court. The Test Act of 1673 had only driven the Duke of York from the English Admiralty; he continued to act as Admiral of Ireland and of the colonies, and this question was probably included at his instigation. Bermuda answered it in 1679, stating that "there is no particular court of Admiralty. But upon occasion, the Governor and Council determine Maritime Causes."⁴⁾ So it continued until the company of Bermuda lost its charter in the closing years of Charles II's reign; but when in 1684 the first

1) Memorials of Bermuda vol.II, p.154.

2) Ibid. vol.II, p.269.

3) Ibid. vol.II, pp.340, 341, 349, 350.

4) Ibid. vol.II, p.429.

royal commission was issued to the governor of Bermuda it specially ordered Richard Cony the governor "to erect one or more ^{Court or} Courts Admirall within our said islands and Territories for the Hearing and Determining of all Marine and other Causes and matters proper therein to bee heard with all reasonable and necessary powers, Authoritys, Fees and Privileges."1) Cony was also appointed "to exercise all Powers belonging to the place and Office of Vice-Admirall of and in all the Seas and Coasts about your Government, according to such Commission, Authority and Instructions as you shall receive from Our Selfe under the Seale of Our Admiralty or from Our High Admirall of our Foreign Plantations for the time being."2) With this commission the vice-admiralty court of Bermuda acquired a distinct existence separate from that of the council, as separate as the court of star-chamber and council in the sixteenth century, the personnel of court and council still overlapping but the two bodies having separate existence. With this separation of court and council the vice-admiralty of Bermuda became part of the system or-

1) Memorials of Bermuda, vol.II, 531.

2) Ibid. vol.II, pp.531, 532.

ganised after the Restoration by the Duke of York, and its later history belongs to the imperial development of the vice-admiralty system.

CHAPTER VII

PRIZE AND PIRACY IN JAMAICA

During the first half of the seventeenth century deliberate attempts had been made to establish specialised admiralty courts in many parts of the empire. Gorges and Mason had failed; Baltimore's statute had brought no admiralty court into being; attempts to encourage the formation of a code of maritime law had met with no success in New England and Bermuda. Throughout the colonies admiralty cases were generally tried in the ordinary courts of law, which made little or no attempt to apply the peculiar procedure and law used in the admiralty courts of England. The latter half of the seventeenth century was to see the rise of specialised admiralty courts all over the empire. The century thus falls into two periods, seed-time and growing-time. There is, however, no hard line which separates them one from another; the most definite division that can be allowed is the period of commonwealth rule, a bare ten years when England was emerging from the chaos of civil war. These years show the re-appearance of a colonial

policy that had borne no fruit under Charles I, but which under his son was to unify the disordered empire; they end with the Restoration and the appointment, in 1661, of a special Lord High Admiral of the plantations across the seas.

The end of the civil wars brought into power a party which had long been interested in colonial development. Men who had founded the settlement of Providence Island, and who had helped in the planting of Virginia and Bermuda were now in control of the whole empire. It was however an empire divided and at variance within itself, for some colonies, such as Barbadoes, supported Charles II and others, such as Massachusetts, were in sympathy with the Puritans, though unwilling to recognise the authority of the English government. The civil wars had loosed the reins of government; the colonies had taken the opportunity to free their trade from the rigid monopolies and rules that had been so hampering, while at the same time the carrying trade of the empire had fallen largely to the Dutch. The English merchant ships had suffered during the civil war from the privateers of both sides as well as

from the usual pirate craft that lay off the African coast, and the English navy was unable to keep the seas. The old problem of how to equip and pay a fleet had not been solved by Charles I, and at the beginning of the civil war the fleet, in the hope of regular pay, had been Parliamentary. But the Parliament could not pay the crews regularly and the end of the civil war saw a mutiny which resulted in a part of the navy joining Charles II at Helvoetsluys. It was not until 1651 that the period of royalist privateering came to an end. The new government was faced with many problems, but the task of building up the shipping of England was not the least important. Merchant ships were needed to regain the carrying trade of the empire and to serve as auxiliaries to the navy; merchant sailors were needed to man the fleets in time of war. The statesmen of 1651 could only conceive of solving such a problem by tightening the control of the government over trade, and the work of reducing the rebellious colonies was soon followed by the work of driving the foreign traders from the empire. An ordinance forbidding intercourse with the royalist colonies and the dispatch of a fleet soon reduced the plantations to submission, but the foreign traders were

harder to deal with than cavaliers in Barbadoes or Virginia. The Navigation Act of 1651, which was directed against them, must be considered later in detail for it cannot be taken separately from the later navigation acts; it suffices here to say that the policy of securing a monopoly of trade by such an act was not new, and that the purpose of the act was as much to encourage English shipping as to increase the customs revenue. For the rest it must be noticed that the act at once led to friction with the Dutch whose trade suffered considerably, and with the colonists who preferred to ship their goods in Dutch bottoms and so save customs dues in England. The friction with the United Provinces over the navigation act concurred with other troubles between the two powers, and the Commonwealth soon found itself at war with the Dutch. The Dutch war over, a struggle with Spain was begun, which was the occasion of Penn's expedition to the West Indies.

From the execution of Charles I to the treaties of 1667, and 1670 which closed the struggle with Spain England was almost ceaselessly engaged in maritime wars, such as the young empire had never known. It is true

that there was never any peace beyond the line even after the Treaty of Madrid,¹⁾ but casual naval skirmishing was not comparable with open war with the Royalist fleet under Prince Rupert with a base at Lisbon, with the United Provinces the chief naval power of Europe, and with Spain, which though declining in power was still strong in Central America and the West Indies. These years of naval war saw an enormous growth of privateering and of piracy, the natural corollary of privateering. and Much of the fighting in the West Indies was carried on by private men-of-war sailing under letters of marque, and the profits were sufficiently great to attract capital and men in considerable numbers. When letters of marque could not be obtained such privateers frequently turned pirate, so that peace at home did not mean peace at sea. Thus the policy of the Commonwealth government led to an increased need for machinery to enforce trade laws and to deal with prize and piracy.

The Commonwealth period also saw the establishment of a special body to deal with trade and plantations, one of the succession of councils and committees with which the king and parliament experimented in the seventeenth century.

1) 1629.

One committee did not succeed another without some lapse of time but for the greater part of the period 1650 to 1697 there was in existence a body of men responsible for administering the colonies. The aim of the government was to bring the colonies under the control of England and to use them for the benefit of the empire. The mother country had certain rights in their eyes; the colonies should be both producers of raw materials for English manufacturers and consumers of manufactured goods made in England. Only if such a state of things could be brought about would England benefit from the plantations which had cost so much to found; then only would the king's revenue be increased, and the king receive his due. This insistence on the king's rights showed itself in many ways such as the struggle over the tax paid by Barbadoes, but it also showed itself in the continued efforts to secure the rights of the Lord Admiral.

The chief factors then to be borne in mind in dealing with the history of colonial admiralty jurisdiction after 1650 are continuous naval war and increased governmental activity in every department. The result of these factors

is that there are two main aspects to be dealt with, the first the history of the colonial admiralty courts in relation to privateering and piracy, the second the development of these courts as machinery for enforcing the trade policy of the empire. The history of prize and piracy in the admiralty courts begins first; indeed prize and piracy are largely responsible for the rapid growth of admiralty jurisdiction in the colonies, and but for the accident of a period of naval war and the need for courts which could condemn prizes, the enforcement of the navigation acts might have been entrusted to the exchequer rather than to the admiralty courts.

So far the West Indies have hardly appeared in the story of colonial admiralty jurisdiction. Important though they were, there were no special factors in Barbadoes or the other British islands to cause the early development of admiralty courts. It was hoped that Old Providence might have reaped a harvest on the sea by plundering Spanish vessels, and the island did become a privateering base. It was not however, provided with a prize court, and either captured ships must have been sent to England for condemna-

tion, or as was more likely, the prizes were never brought into court. Such admiralty cases as arose in the British settlements in the Caribbean were heard by the governors and councils of the plantations, and were sufficiently few in number to make no great impression on the history of the plantations. The real beginning of the rise of admiralty courts in the West Indies is to be found in Sir George Ayscue's expedition to Barbadoes. Being sent to reduce Barbadoes he found several ships trading at the island contrary to the act forbidding intercourse with the rebellious plantations and contrary to the Act of trade, for some of them were Dutch. These ships were seized and sold but Ayscue apparently could not wait to secure the proceeds of the sale, and had to leave them behind in Barbadoes, where they remained in private hands. When the Spanish war broke out this prize-money again became important for the Commonwealth government reckoned on it to meet some of the expenses of the West Indian expedition; it amounted to some "Seaven hundred and odd thousands of sugar," which could not be recovered by either Penn or Venables.

The history of this West Indian expedition must be

touched on here for it was the conquest of Jamaica that led to the extensive privateering before mentioned. The events of the expedition also revealed the need of a prize court in the West Indies, for the two commanders Penn and Venables quarrelled, among other things, over the appointment of a prize officer. The instructions given to Penn and Venables were somewhat vague, but it was intended that the expedition should draw support from Barbadoes and the other British islands and then make an attack on the Spanish settlements. When the fleet reached Barbadoes several Dutch vessels were there, trading against the navigation act of 1651. These were seized by the order of the two commanders. There was however no itinerant admiralty judge among the personnel of the expeditions nor was there any admiralty court in Barbadoes, and some means therefore had to be devised to deal with the prizes. These were not the first ships seized at Barbadoes for breaking the Navigation Act, for Winslow, who was one of the commissioners in charge of the expedition, complained bitterly to Thurloe that already a ship had escaped condemnation, because the governor had permitted a trial at common law, at which trial

all the attorneys in the island were engaged by the strangers and the jury had brought in a verdict against the state.¹⁾ The instructions from the government were that an inventory of all prizes was to be made and strict account rendered to the Prize Office in England, and it was expected that captured ships would be condemned in the English admiralty. This was no more satisfactory than trial at common law, for often a prize was needed for immediate use as a transport or a man-of-war.²⁾ Furthermore it left a heavy responsibility on the prize officer and it was easy for irregularities to occur when vessels were commandeered for use before condemnation.

When the expedition was at Barbadoes Penn appointed his nephew, Poole, prize officer and handed over the captured ships to his charge.³⁾ Trouble at once began because Venables had not been asked to concur in the appointment, and his narrative is full of charges against Poole of suppressing invoices and accounts, and of permitting

1) Thurloe III p.249.

2) Ibid. p.499.

3) Camden Soc. New series vol LX. ed. C.H.Firth, Narrative of General Venables, pp.10, 51.

irregularities and even imbezlements. The quarrel between Penn and Venables did not make it easier to manage the prize business, and the commissioners wrote to the admiralty in England complaining that they could do nothing without further authority to try cases. The commission gave them authority "to take Informations, and to Implead all Persons before ourselves for what shall be Owinge his highnes, and for such debts as became dew to any Forrainers; - by reason of any goods or Comodities brought hither Contrary to ye Lawes of England", ¹⁾ but the Barbadians resented interference with their free trade and the assembly denied the authority of Thomas Modyford ²⁾ and his fellow commissioners. Insistence on trial by common law made it impossible to collect debts because the defendant could not be brought into court. Since Modyford and the others wrote to the Commissioners of the Admiralty in this strain and asked for a commission "with a full plenary and Legall power" it may be assumed that it was power to erect an admiralty court that they desired. ³⁾

1) Add. Mss. 18986 f 205.

2) Afterwards governor and vice-admiral of Jamaica.

3) Add. Mss. 18986, f. 205.

An admiralty court was obviously what was needed to condemn prizes taken in war and for breach of the navigation acts.

Nor was the difficulty of dealing with prizes confined to Barbadoes; every ship sent out to collect help for the expedition had orders to arrest all vessels breaking the navigation act, and actually several were taken into custody at Montserrat. The practice apparently became settled on the following lines; every captured ship, sooner or later, was brought to the place where the commissioners in charge of the expedition happened to be; there the prize was valued and if it were handed over to the commissioners, a receipt was given to the captor so that prize money could later be apportioned among the crew.¹⁾ Presumably the commissioners were responsible for seeing that all prizes were brought home for condemnation; nothing, however, is said to show whether those ships which were not handed over by their captors were ever condemned at all. The foregoing practice was clumsy both because no provision was made for condemna-

1) Thurloe III p. 583. Penn's instructions to Goodson.

tion in the West Indies, and because privateering crews must have found it difficult to collect prize money in England. But apart from these reasons for erecting an admiralty court in the West Indies there was yet a further one. A prize ship could not be legally sold before condemnation, and anyone who purchased a prize ship required a certificate from the prize court as a title-deed. Without such a certificate the ownership was open to legal attack. Ships, however, were sorely needed in West Indian waters in the fifties, for besides the heavy natural wear and tear suffered by all vessels in tropical waters, there was fighting enough to make the losses in ships a serious matter. Naturally neither governors nor privateers wanted to send prizes home to England when ships were needed in the Carribbean, but neither did they wish illegal sales to keep down prices at the auctions of prizes, nor to find that ships could be arrested on their voyages because of imperfect titles. Out of such circumstances grew the first West Indian admiralty court.

This court had its unofficial beginnings in Jamaica, soon after its conquest by the English. Penn and

Venables, having quarrelled irreconcilably, returned to England to tell their stories to the government, and the expeditionary force was left in Jamaica to make good its footing against disease and famine, far worse foes than the Spaniards. The privateers were a great defence against Spanish attacks, but now that the commissioners were dead or back in England, there was no one who could or would see that prizes were sent home for condemnation.

The chief source for the history of this first admiralty court is a manuscript volume, now in the British Museum, consisting of entries of minutes of the council in Jamaica, of licenses and of commissions and instructions issued by Colonel Doyley.¹⁾ Doyley was one of the chief officers of the Penn and Venables expedition. He was put in command of the Barbadian regiment raised by Lewis Morris, who refused to leave the island when the commissioners would not clear the Morris estate of debt. As colonel of the Barbadian regiment, Doyley became a member of the council of war. He was governor of Jamaica, too, from November 1655 to December 1656 and again from September 1657 until after

1) Add. Mss. 12423.

the Restoration. He was, in fact, well suited for the post for he had seen considerable military service, had been educated at one of the Inns of Court, and had a constitution which resisted the plagues of Jamaica when others succumbed.¹⁾ Joined with Doyley in administering Jamaica were "Admirall Goodson, Lt Generall Brayne and others. This commission continued the prize system already in operation and appointed as prize officer Captain Povey. For how long he held office, it is impossible to say, but when Doyley re-appointed him to the same office in April 1659, he spoke of his having served already in that position.²⁾ From the instructions issued to the first commissioners appointed to govern Jamaica, it is clear that prizes were to be inventoried and sold on the spot and that only accounts were to be sent to the high court of admiralty.³⁾ No mention is made of an admiralty court in Jamaica but Doyley speaks in a letter to the council of State, written 27 Feb. 1657, of a commission under the great seal, directed to General Brayne and others, for

1) Camden Soc. New series vol. LX. ed. C. H. Firth, Narrative of Gen. Venables, pxxvii; Thurloe vol. V, p.138, D'oyley to the Protector.

2) Add. Mss. 12423, f. 61 v.

3) Cal. S. P. Col. A.&W.I. Addenda 1574 - 1674, no.232; the commissioners were Goodson, Fortescue, Sedgwick, Searle and Stoakes.

erecting an admiralty court to try a special case.¹⁾ It is reasonable to suppose that the sales of prizes were made at first without condemnation in a court of law; indeed Doyley goes on to refuse to act as admiralty judge because the commission requires three of those named to sit, and of them all he alone was alive. His legal education had made him timid, and although he saw plainly the need for an admiralty court, Doyley shrank from erecting the court without authority from England. He knew well the pitfalls which beset a colonial governor and did not dare to adventure himself "to the merchants lash."²⁾

Doyley apparently did not receive any commission as admiral in answer to this letter, for questions arose later as to the legality of his acts; circumstances, however, drove him into acting as admiral within a very few months. On 28th September 1657 he appointed a commission consisting of Cornelius Burroughes, who was steward general, and three others, to enquire into "the difference that had lately happened betwixt Captaine Wm. Swanley comander of the Suzanna of London And the Shippes company." The finding

1) Thurloe VI p. 834.

2) Thurloe vol VI p. 834.

was that the mate and company were guilty of "absolute rebellion against the said Master contrary to the lawes and Customes of the sea."¹⁾ Doyley also heard two protestations, one by a merchant against a master for not fulfilling the charter-party, the other by a captain, who had been obliged by stress of weather to break his contract.²⁾ Another merchant, Mr. Bird, fell out with a Captain James over broken casks of wine, and Doyley had to settle this dispute by appointing a commission to view the damage and decide who should bear the loss.³⁾ But these commercial cases are only a small part of the work done by Doyley. He was frequently busied in regulating privateering and trying to suppress piracy. He had to appoint Captain Poyey and Peter Pugh to appraise a vessel that had been stolen from Barbadoes and to secure her in the possession of the steward-general;⁴⁾ he issued orders for the arrest of Peter Swayne and of Captain Grovers, both guilty of piracy, one on a Barbadian vessel, the other against the French of Tortudas.⁵⁾

1) Add. Mss. 12423 f. 33.

2) Add. Mss. 12423, ff. 55v, 60.

3) Ibid., f. 86.

4) Ibid., f. 71.

5) Ibid. ff. 80v, 82v.

Commissions and instructions to privateering captains were often issued, and both Spanish and Dutch prizes are mentioned in the journal. Doyley apparently considered himself legally able to direct the disposal of such prizes, for he not only ordered what should be taken for the use of the state but also gave certificates of ownership to those who bought prizes by inch of candle.¹⁾ This was the usual method of auctioning ships, the last bid before the inch of candle burnt out securing the purchase.

Although Doyley was issuing certificates and settling other prize matters, he was not certain of his right to do so. The chief naval officer in Jamaica after Goodson left for England was Christopher Myngs, captain of the *Marston Moor*. Myngs had seen considerable service in West Indian waters, and seems to have known how to make his profits from the casualties of such service. Returning to Jamaica in the winter of 1657-8 Myngs picked up some Dutch vessels trading at Barbadoes, and brought them to Jamaica. Doyley did not feel sure that he had authority to deal with the case and summoned a council of the colonels commanding the

1) *Ibid.* ff. 41v, 49v, ^{54,} 54v, 61v, 69, 72v, 89v, 91.

regiments in the island. They decided that the admiralty court in Jamaica could not condemn the Dutch ships, but that they were properly arrested by Myngs and were prize to the commonwealth.¹⁾ Myngs was very angry at this decision, and indeed he must have felt that an admiralty court, which could not hear prize cases, was an useless kind of court and his feelings probably grew more acute when he was obliged to leave the prizes behind in Jamaica on his dismissal in June 1659. In the meantime Myngs wrote to the Commissioners of the admiralty that the councillors had found the ships prize but that they declared they had no power to try them. This he declared would make it impossible to get them condemned later, for "what passes in a man's lifetime for a Spanish mariner may be represented over his grave for an English merchant."²⁾ Burrough writing a few weeks later to the same commissioners thought that Myngs had not been as serviceable as he should have in this matter.³⁾ It is possible that this squabble might have been smoothed over if Myngs

- 1) Haring, C. H., The Buccaneers in the West Indies in the XVII century, pp. 98,99.
- 2) Cal. S. P. Col. A. & W.I. Addenda 1574-1674 no.297.
- 3) Ibid. no. 317.

had not been so successful in the raid carried out on the Spanish colonies in the spring of 1659. The value of the prizes taken by Myngs was so great that Doyley appointed Captain Povey as prize officer, although the year before he had been reluctant to burden the state with such an officer.¹⁾

It was the custom in Jamaica for prizes to be sealed up; presumably the hatches were sealed on reaching port, possibly by the prize officer himself, for the governor had had to order the seals of some prizes to be broken in May 1658 to get at water-casks belonging to the "Marston Moor".²⁾ In spite of this practice Doyley was convinced that Myngs had plundered the prizes to the extent of 12,000 pieces of eight,³⁾ and early in June sent Myngs home in the "Marston Moor".

Though Doyley would not condemn the prizes taken by Myngs he acted vigorously in an alleged prize case that came before him early in 1661. Goods were brought to Jamaica in the January of that year by George Freeborne,

1) Add. Mss. 12423, ff. 61 v., 69.

2) Ibid. f. 49 v.

3) Cal. S. P. Col. A. & W. I. Addenda 1574 - 1674, No. 318.

Jeremiah Medlicott and others. Doyley found that these had been taken from a Dutch ship, the "St Peter" of Amsterdam, without any commission, when the English and Dutch sailors were fraternising on the coast of Cuba over careening and watering their ships. Doyley seized all the spoils that could be found and placed them in safe-custody, sent the ring-leaders in irons to England to stand their trial for piracy and placed the others as indentured servants on the plantations. These proceedings came out in the admiralty court of Jamaica in September 1662 when Freeborne and Medlicott, acquitted of piracy, tried to get the spoils taken out of custody and condemned as prize. They were unsuccessful for the records of the court proved that they had already had their share. Doyley had refused to try Freeborne and Medlicott for piracy until he had orders from England, because he himself had no admiralty commission.¹⁾

The position in Jamaica under Doyley was then contradictory. There was an admiralty court working between

1) H. C. A. Vice-admiralty proceedings 59, ff. 20 - 24 v.

1657 and 1660, but it was not legally established by the admiralty commissioners, nor could Doyley get any answer from them about the legal position of the court.¹⁾ The court rested simply on the authority of the governor, and it is to Doyley's credit, that he finally found the courage to meet the needs of the sea-faring people of Jamaica by acting unconstitutionally. Most of the work was done by special commissions who collected the evidence but on the other hand the governor and council seem to have decided the cases. There is nothing to show that the admiralty court of Jamaica had as yet developed the special organisation of an English vice-admiralty court. No mention is made of judge, registrar or marshal, and only once is reference made to the laws and customs of the sea.

Yet admiralty jurisdiction had developed further in Jamaica than in any of the other British Islands.

Barbadoes had a prize office with four commissioners, Thomas Modyford, John Yeamans, Richard Saunders and John Roberts. After the Penn and Venables expedition left

1) Ibid., No 327.

Barbadoes these men still found work to do in arresting Dutch and Hamburger ships that came to trade against the Navigation Act, but they were obliged in 1655 to take bonds from Giles and George Pasfield of the "Barbadoes Merchant", that they would appear before the Commissioners of the Admiralty in England to answer the objections of the prize office of Barbadoes.¹⁾ They complained of the impossibility of doing their work efficiently without an admiralty court in the island because they conceived that no debts could be collected in the ordinary courts, and Barbadoes had no admiralty court.²⁾ Nor had any other of the British islands even a prize office; Jamaica was the only place where any admiralty court could be held to exist.

Such were West Indian conditions at the Restoration. The commonwealth saw the genesis of admiralty jurisdiction in Jamaica and Barbadoes; the Restoration period was to establish admiralty jurisdiction in the Carribbean islands. On 16 May 1660 Charles II, who was still in Holland, appointed his brother James High Admiral of England, or so, at

1) Cal. S. P. Col. A. & W. I. Addenda 1570 - 1674. No. 217, 219.

2) Ibid., No. 216.

least, was held to be the case by Pepys and others. It is doubtful whether James were not already High Admiral for it is certain that he had acted in that capacity on at least one occasion during the interregnum when he had fixed the fees to be levied in the English prize courts sitting in Brittany.¹⁾ Since most of the prizes condemned there were English ships Charles II may well have wished to bury his brother's actions in oblivion, and to act as if the appointment were a new one. Charles I had always intended that his second son should hold the admiralty for life, and Charles II carried out his father's wishes. The Duke of York landed in England as Lord Admiral and held an admiral's office until the Revolution. Unlike any previous admirals James received two patents; the first was similar to those issued to his predecessors and constituted him admiral of England, Wales, Ireland, Normandy, Calais, Aquitaine and the dominions beyond the seas;²⁾ the second patent, which was passed a year later, made him admiral of Dunkirk, New England, Jamaica, Virginia, Barbadoes, St. Christophers,

1) E. H. R., vol. XLIV, no. 175, p. 454.

2) Rot. Pat. 12 Car. II. part 17, n. 22.

Bermuda, Antigua in America, Guinea, **Benin** and Angola in Africa, and Tangiers in the kingdom of Fez. ¹⁾ The powers outlined in both patents were on the usual pattern, powers to erect courts and appoint deputies being included.

This second patent marks a distinct change in the organisation of the admiralty and was to prove of great importance in a few years. Previously the phrase "dominions beyond the seas" had been held to cover the colonies; hitherto no doubt had been raised as to the ability of the admiralty to issue a patent to a colonial vice-admiral, ~~for when~~ ²⁾ Mason applied for his patent as Vice-admiral of New England orders were given for it to pass the great seal of the admiralty. But the colonies had been divided in their allegiance during the civil war, and the government, anxious to strengthen imperial control, wished to stop every loop-hole by which a recalcitrant colony might try to escape. Already the admiralty courts had been dealing with offenders against the navigation act and obviously such courts could be useful in controlling colonial trade.

1) Rot. Pat. 14 Car. II pt. 12 no. 6.

2) Tuttle and Deane, Captain John Mason, p. 347.

So the second patent was issued, and by it James maintained himself as Admiral until 1688. The Test Act of 1673 drove him from the admiralty of Great Britain, but the Act did not apply either to Ireland or to the colonies, and James remained Lord Admiral of Ireland under his first patent, and Lord Admiral of the colonies under the second. It was not apparently necessary for him to get a new patent for Ireland when he resigned the admiralty of Great Britain and the lost French possessions. Thus the general impression that James resigned the admiralty because of the Test Act is only partially true; the significance of his resignation is that it separated the Irish and colonial admiralities from the English, a significance which must be discussed later in relation to the administration of the admiralty in the colonies. All that need be said here is that the administration of the colonial admiralty was not merged in that of the British and Irish admiralty.

The effects of the second patent soon became felt in the colonies. Hitherto there had been only sporadic attempts to establish a colonial admiralty system comparable with the English vice-admiralty, but from 1661 onwards there

was a continuous effort to organise and maintain a colonial admiralty system. Wherever possible the system, established under James, Duke of York, incorporated existing admiralty courts, such as that which had developed in Jamaica; but in some colonies such as Massachusetts a conflict took place and the old system had to give way to the new. Roughly speaking where prize work was the most important business of the colonial admiralty there was no conflict between old and new systems; where the admiralty was most concerned in enforcing the navigation acts there was bitter strife.

Jamaica was, of course, the colony where privateering was most flourishing, and more prizes probably came into her ports than to any other colony. So long as privateering was a flourishing business the admiralty court was popular, but later when the home government wished to keep the peace with Spain and ordered the suppression of the privateers the admiral of Jamaica became an unpopular person. In the early sixties, however, privateering was making money for Jamaica and the admiralty court was kept busy condemning prizes. Fortunately it is possible to

reconstruct the working of this court for a lawyer who was in Jamaica at the time had a precedent book compiled for his use. This volume is now in the Public Record Office among the vice-admiralty records. It is, however, unique both in date and in character, for it is the only record of the day to day life of a colonial admiralty court which has survived in England from the seventeenth century. There are papers relating to special cases among the Colonial Office archives, and other scattered papers in the great libraries of this country, but the Jamaica precedent book alone records the daily activities of a colonial admiralty.

When the Duke of York became Lord Admiral, Colonel Doyley was in authority at Jamaica. It was not likely that a parliamentarian would be continued as governor and Doyley was himself anxious to return to England; until, however, a new governor could be sent out he remained in office and instructions were sent to him for his guidance. Among his instructions was a clause directing him "to settle Judicatories for civil affairs and admiralty."¹⁾ These instructions were followed not long after by a pardon for everything done in Jamaica before 1661.²⁾ This put

¹⁾

1) Cal. S.P. Col. A. & W. I. 1661-1668. no. 22.

2) Ibid., no. 734.

Doyley's actions after 1661 onto a legal basis, but in spite of the pardon his actions before 1661 could be and were questioned in a court of law. Doyley did not long remain governor, for the summer of 1662 saw the arrival of Lord Windsor, a young royalist who had fought for the king. Windsor brought with him instructions to establish an admiralty court and power to adjudicate therein on all ships suspected of trading with the Spanish settlements. The new governor derived his authority to carry out these instructions from a patent issued under the seal of the admiralty by the new lord admiral of the colonies. This must have been the first patent issued to a colonial admiral since Mason's, for there is a note in the entry book of patents, kept by the admiral's office, that Modyford's patent of 1663 was in the same form as Windsor's; no other early patent has any reference to a previous one.¹⁾ Unfortunately Windsor's patent has disappeared and so has the "first book of Warrants"²⁾ in which it was noted. It is possible to reconstruct Windsor's own proclamations. He was appointed commander-

1) Cal. S. P. Col. A. & W. I. 1661 - 1668, no. 259;
Ad 2 Out letters Admiralty and Vice-Admiralty ff. 15v,
1755
16.

2) Ibid.

Windsor's powers both from the entry of Modyford's patent and from Windsor's own proclamations. He was appointed commander-in-chief of royal ships at Jamaica except when any special fleet under an admiral, vice- or rear-admiral was sent to Jamaica; he was authorized to issue commissions or letters of marque or reprisal; he was empowered to fill vacancies in the posts of judge, advocate, proctor, registrar and marshal so that all prizes brought into Jamaica might be properly condemned; and he was made responsible for collecting the lord admiral's tenths of all prizes.¹⁾ Windsor used the style of "Vice Admirallus in mari Americano"²⁾, claiming a wider jurisdiction apparently than only Jamaica, but since Modyford, who was only vice-admiral of Jamaica, was supposed to have a similar patent to Windsor's, this claim may have been baseless.

Lord Windsor was in Jamaica for not more than three months of the summer of 1662, but his short stay saw the launching of an expedition against Cuba, Honduras, Campeachy and other neighbouring Spanish settlements.³⁾ The excuse

1) Ibid. ff. 5v, 6.

2) H. C. A. Vice-Admiralty proceedings 59, f 8.

3) Ibid. ff. 11r-13.

for this attack was that the Spaniards would not permit the English to trade freely in the Spanish colonies, but in reality the expedition was only part of the war between Jamaica and Spain which had begun in 1655. The fleet of royal ships and privateers was sent out under the command of Captain Christopher Myngs, who was now back in Jamaica. Windsor had issued letters of marque to various privateers, and both their instructions and the orders given to Myngs ordered that all prizes should be brought into the court of admiralty at Jamaica, with cargo unbroken and ships' papers intact. To insure that the cargo should not be pillaged seals were to be affixed¹⁾; by whom or to what is not clear but probably the marshal of the admiralty or his deputy sealed the hatches when the prizes were brought into harbour, for an entry in the table of fees to be levied in the admiralty of Jamaica shows that 6/8 was to be charged in prize process "For the seale to the Deckes".²⁾ The period for which the letters of marque were valid varied; one issued in September 1662 was for nine months, others issued

- 1) Add. Mss. 12423, f. 49 v.; H. C. A. Vice-admiralty proceedings 59, f. 29 v from back, Windsor's instructions to Capt. Adrian Vandeimer "As soon as ye are possessed of ye sd ship, scale up ye Deckes".
- 2) Ibid. f. 5 from back. The reading of Deckes is supplied by Mr. Hilary Jenkinson.

after Windsor had left were for eight, ten and eighteen months.¹⁾

To deal with the prizes, which it was hoped the expedition would bring back, Windsor or his deputy Sir Charles Lyttelton erected a court of admiralty, which generally met at Point Cagway.²⁾ There is no absolute evidence that Windsor himself was responsible, except his own claim, but probably the arrangements were concluded before he left Jamaica. It is the proceedings of this court that are recorded in the precedent book already mentioned. The volume is certainly not one of the regular court books which every registrar was supposed to keep. The thin parchment bound book contains entries in various hands, made at both ends without regard for chronological order. These consist of common law and probate precedents, copies of proclamations, instructions, commissions, letters of marque, privateers bonds, the scale of fees chargeable in the admiralty, and entries of cases heard in the admiralty court between September 1662 and March 1664. The entries may however have been begun before October 1662 as those at the back of the book include copies of cases heard in the

1) Ibid. ff. 29 - 36 v, from back.

2) Later called Port Royal.

high court of admiralty in 1658, and of a proclamation issued at Paris by "James" regulating fees for the admiralty court in Brittany. The name of the owner of the book has been torn out, but it seems probably that it was compiled for a lawyer practising especially in admiralty in Jamaica, and was brought to England later as evidence in settling the question of Sir Christopher Myngs's prizes; it may have been the property of Charles Hardres, the registrar of the court, who practised there also as a proctor.

The court first met on the eve of the departure of the expedition to Cuba, but it was on the return of the fleet with its prizes that it became really busy. More than half of the work done by the Jamaican court was prize, and since one prize case is very like another an account of the condemnation of seven ships and barks taken at St. Jago de Cuba will illustrate the procedure well enough. The court met on 29 October 1662 before Wm. Michell, Doctor of civil law and judge of the admiralty. Point Cagway was the usual meeting place but sometimes the court sat at St. Jago de la Vega; the meeting place is not mentioned in the case recounted here. Captain Mings of the

Centurion, Captain Swart of the Griffin and the commanders and officers of the expedition brought in petitions on behalf of the prizes taken at St. Jago de Cuba, and preferred particular claims. These were heard with various allegations on them and order was made that they should remain in the same state until the next court. Inquiries as to fact were made and Mings was ordered to appear at the next meeting to answer questions about his instructions as to prizes. Finally precognizance was made several times, and on the owners and others concerned in the prizes failing to appear, the first default was entered.

The court met next on 3 November, and Hardres began the proceedings by moving on behalf of the King that sentence might be passed on the prizes lying in Cagway harbour. Thereupon monitions were issued on the petitions and the defendants were again cited to appear. Nobody came forward and the second default was recorded. Myngs then reported that he had agreed that the privateers should share equally with the navy in the proceeds of the prizes and a board, consisting of Myngs as Commander-in-chief and Edward Pinhorne and three other merchants, was appointed to

enquire into the claims of the private men-of-war. Evidence was then taken as to the number of vessels captured at St. Jago de Cuba. The proceedings closed by the defendants being summoned thrice, but they did not appear and the court proceeded to the decree¹⁾ and condemned all the vessels captured at St. Jago de Cuba as lawful prize, reserving the admiral's tenths. These were to be taken out of the full value of the prizes before any claims of the victuallers officers or mariners of the expedition were satisfied. After the tenths had been paid over to the Judge of the Admiralty the prize commissioners were to divide the rest according to established custom.

Besides the account of the hearing of the case there are entries of the final decree which was in Latin, the authorization of the prize commissioners,²⁾ their finding, the statement of the value of the prizes as realised by auction, and certificates of ownership which were issued under the admiralty seal to purchasers of the ships.

- 1) The decree is dated 13 November 1662. This is probably a copyist's error for 3 November as the court would not have waited from 29 October to 13 November to condemn the prizes.
- 2) The commission now included Capt. Myngs, John Man, Epenetus Crosse, Robert Castells, John Loveing, Edward Pinhorne and William Beeston; a quorum was three, of whom Myngs or Man must be one.

Six of the prizes were sold by inch of candle but the seventh was given to Robert Avis, for it had never left St. Jago de Cuba and Avis got it on condition that he salvaged her "which he Did through a great Deale of Labor and Charge." The sale of the ships realised £390 . 10, 00 and the cargoes of sugar and molasses brought the total up to £729 .07.06. Of this the Deputy-governor Sir Charles Lyttelton took £72 .18.06 for the lord admiral, £200.00.00 for the king's share for the Centurion and £105.04.06 for the Griffen; these sums included the fifteenths due to the king on all prizes. The residue was distributed among the privateers.¹⁾

The amount to be retained by the king from prize-money has never been fixed. At the beginning of a war it is customary for a bargain to be arranged by which the percentage to be paid to the navy is determined, but there has never been any legal obligation to pay prize-money to the navy. The custom of allowing prize-money has however gone on, and the navy received considerable sums during the Great War, the king then retaining only the value of ships

1) H.C.A. Vice-admiralty Proceedings 59, ff. 14- 18.

seized in harbour. Charles II, however, claimed a fifteenth, and so in addition to his responsibility for the lord admiral's tenths of the gross profits, the admiral of Jamaica was responsible for the king's fifteenths.

For some two years this admiralty court met frequently, spending more than half the sittings in hearing prize cases; but after Sir Thomas Modyford's appointment as governor there were fewer naval expeditions, efforts were made to suppress privateering and piracy and the admiralty court did not meet so regularly. Thus while Sir Thomas Modyford informed the British authorities in 1664 that an admiralty court was held at Port Royal, ~~According to~~ Sir Thomas Lynch wrote in 1671 that there was no admiralty court, nor any great need for one; he considered the common law courts could do the bulk of the work and that a specially appointed court could meet special needs.¹⁾ On the other hand Sir Thomas Modyford had answered the inquiries sent out in the same year by stating that there was an admiralty court which met at Port Royal before Sir James Modyford, whose

1) Cal. S. P. Col. A. & W. I. 1661 - 1668, no 810; ibid. 1668 - 1674, no. 604, i.

sentence as judge was definitive.¹⁾ In 1676 an admiralty court was held at Port Royal before Sir Henry Morgan and two assistants, and this court must have continued to sit, for the following year the council of Jamaica resolved to establish the fees in the admiralty.²⁾ What happened was that an admiralty court could always be called into existence because every governor had a commission from the lord admiral, and that an admiralty court functioned as need arose. Except for the period of Lynch's administration an admiralty court did function continuously in Jamaica throughout the period dealt with here, but its records, if they exist, are not available in England.

Sometimes the governor acted not only as vice-admiral but also as judge. After Michell's death although Sir Charles Lyttelton, who as deputy for Lord Windsor was both admiral and governor, had sat as judge in the admiralty court³⁾ his successor Modyford did not; Col. Cary at first and later Sir James Modyford served as judges.⁴⁾ After

- 1) Cal. S.P.Col. A.& W.I. 1668 - 1674, no.704. Sir James and Sir Thomas Modyford were brothers.
- 2) Ibid. 1675 - 1676, no.800; Ibid. 1677 - 1680, no.39.
- 3) H.C.A. Vice-admiralty proceedings 59, passim; Cal. S.P.Col. A.& W.I. 1661 - 1668, nos.645, 648.
- 4) Ibid. nos. 789, 786, 942.

Modyford 's term of office came to an end Richard Brayne acted as judge until Sir Henry Morgan, during his term of office as deputy-governor, dismissed him from his offices of chief justice of common pleas and judge of the admiralty court. Lynch on his appointment as governor was ready to reappoint Brayne to the court of common pleas in 1683, when Brayne was petitioning the king to restore all his offices, but apparently the admiralty judgeship was satisfactorily filled. Sir Henry Morgan, during his deputy governorship, had acted as admiralty judge and continued to do so during part of Lord Vaughan's period of office. Vaughan himself also acted as judge. It may have been this which caused the assembly of Jamaica to doubt the wisdom of one man holding both the office of governor and admiral. The Lords of Trade and Plantations were asked in 1680 to consider this point when the constitution of Jamaica came before them, but refused to do so. The situation was not cleared up, and Lynch himself apparently acted as admiralty judge after the breach with Morgan for in 1683 he stated in his description of Jamaica that

the governor was judge admiral.¹⁾

The judge however was not the only regular official of the court; names of registrars, advocates and marshals appear from time to time. Sir Thomas Lynch in February 1677 acted for some time as marshal of the admiralty²⁾; Modyford appointed an advocate-general in the admiralty in February 166⁸/₆, and in 1693 Beeston placed the offices of advocate and judge in the hands of a Mr. Hauses, whom the Earl of Nottingham had recommended. This appointment he said had angered the attorney-general who thought the advocateship of the admiralty should be his, since the two posts were commonly held by the same man.³⁾

It will thus be seen that the organization of the Jamaican court was similar to that of the High Court of Admiralty but in jurisdiction there were differences. Considerable doubts arose from time to time in Jamaica as to the power of its admiralty court to try piracy and prize. In England the High Court of admiralty tried prize but not

1) Cal. S.P.Col. A. & W.I. 1661 - 85, nos. 1164, 1260; Ibid. 1677 - 80, nos. 1588, 1622; Ibid. 1675 - 76, No. 913.

2) ²Ad1755 entry book of admiralty patents, f. 36 .

3) Cal. S.P.Col. A. & W.I. 1661 - 68, no. 1062; Ibid. 1693 - 96, no. 345.

piracy, which under the statute of Henry VIII was tried by a special commission under the great seal. The admiral, or his deputy, was always one of the commission and thus the admiralty judge came to hear piracy cases, although the procedure used was that of the common law and not that of the civil law. In England, moreover, vice admiralty courts neither took cognizance of capital offences, which were heard by the High Court in its oyer and terminer, nor of prize cases, which were also decided in London. Doyley had never considered the Jamaican court more than equal to an English v.ad. court and always referred prize and piracy cases to England. Subsequent to Lord Windsor's commission as admiral, however, prize cases were regularly dealt with in Jamaica, in accordance with special powers granted in the admiral's patents granted to the governors. The inducement to deal with such cases was strong since the salaries of the official depended on the amount of work done by the court. Writing towards the close of the eighteenth century, Long urged in his History of Jamaica that regular salaries should

1) ~~Cal. S.P.Col. A.& W.I. 1661 - 1668, nos. 530, 531, 535.~~

be paid to the officers of the admiralty court, for in time of peace there was so little business that the fees brought next to no profit. Even in the hey-day of the prize court of Jamaica Lyttelton found the fees insufficient recompense and begged for a fixed salary. This he did not obtain, but an order for the payment of £1000 to be paid out of prizes and prize goods must have been some consolation.¹⁾

Unfortunately the scale of fees that belonged to the judge in prize cases is not given with the table copied into the precedent book, and no earlier rate has yet been found than that given in Long's history, where he prints the scale fixed by Sir William Beeston in 1697. By this scale the judge received £3 . 10 . 0 on every condemnation or acquittal of a ship, £3 . 0 . 0 on every £100 value of vessel and goods condemned, and £1 . 0 . 0 on every £100 value above that. Long reckoned that on a prize worth £30,000 the judge got £300, that is 1 per. cent.²⁾

No doubts as to the competency of the Jamaican court to try prizes seems to have arisen until 1693 when Sir

1) Cal. S. P. C. I. A. & W. I. 1661-1668, nos. 530, 531, 535.

2) Edward Long, History of Jamaica, London 1774, vol I, p. 78.

William Beeston complained to the Earl of Nottingham that he had no authority to condemn prizes and that the Admiralty had insisted on taking this clause out of his admiral's patent.¹⁾

The lawyers in Jamaica thought Beeston's commission warranted his holding a prize-court but apparently the privateers were nervous. Beeston tried to get round the difficulty by giving Richard Lloyd, the then judge of the admiralty, a commission under the great seal of the island.²⁾ The lords of admiralty however seem to have considered his commission sufficient without any addition.

In one respect the jurisdiction of the Jamaican court grew to be greater than that of the English High court of admiralty. Doyley was the last governor to hesitate to try pirates; indeed succeeding governors could not have carried out their instructions to suppress privateering without assuming the power to try erring captains for piracy. Even with the power it was hard enough. According to the statute of Henry VIII, as we have seen above, the natural method of dealing with pirates would have been for the

Cal. S.P. Col. A. & W. I.

1) 144. 1693 - 1696, no. 207.

2) Cal. S.P. Col. A. & W. I., 1693 - 1696, no. 301.

governor to appoint a commission under the great seal and to put the judge of the admiralty court on it; this commission would then have preceded by common law. In 1684 the Lords of Trade and Plantations asked the King's Counsel and the Advocate-general for an opinion on admiralty jurisdiction and received an answer that the statute of 28 Henry VIII did not extend to the colonies, and that piracy ought therefore to be tried before the admiralty court of Jamaica according to maritime law, and so by civil law procedure. Even before this opinion was given the admiralty court in Jamaica had been trying pirates. The case of one, Deane, illustrates this. The chief importance of this case lay in the share it had in the quarrel between governor Lord Vaughan and Sir Henry Morgan, at that time judge of the admiralty; but it beyond this proves that piracy was tried by admiralty law, for when Vaughan reported the case to the Earl of Anglesea he sent the depositions and exemplifications to show that the case followed admiralty precedents in every way.¹⁾ Dr. Lloyd, judge of the High Court of Admiralty, did not however

1) Cal. S.P.Col. A.& W.I. 1675 - 76, no. 916, i - v.

approve of Vaughan's action, and reported to the Lords of Trade and Plantations that piracy ought to be tried by Oyer and Terminer, that is according to the statute of 28 Hen. VIII. It was agreed that Deane, who was under sentence of death ought to be tried again under a commission of Oyer and Terminer, and that such a standing commission should be issued to the governor of Jamaica. No second trial however was held, for Morgan's faction, which was deeply implicated in privateering, raised such an outcry that Deane received a pardon under the great seal of Jamaica. The standing commission seems to have been sent¹⁾ and to have included the chief officials in Jamaica. It cannot, however, have been in force for more than four years, for in 1684, a fresh decision was made by the law officers in England, that pirates were to be tried by Admiralty law.²⁾ The decision laid down that the statute of 28 Hen. VIII did not extend to the colonies and that no commissions could be granted under that law. Furthermore the law officers declared that the vice-admirals power extended only to lesser offences and did not include capital crimes, though the vice-admirals had hanged pirates on various occasions.²⁾

1) ^{912,} Ibid., nos. 913, 916, 976, 993, 994, 1001, 1093;
Ibid., 1677-80, no. 485.

2) Cal.S.P.Col. A. & W.I., 1681-1685, no. 1578.

The authority of the vice-admirals was at this time being questioned on other points for disputes between governors and naval captains had raised the question of court-martials. Colonial governors received not only admiral's patents empowering them to erect courts similar to the English admiralty courts, but also authority from the Lord admiral to command royal ships stationed in the plantations, except in such cases where a special expedition had been sent out under an admiral, a vice-admiral or a rear-admiral. So far so good, but the governor could not always exact obedience, and in Jamaica it became on occasion urgently necessary to know how a governor ought to deal with a recalcitrant captain. Governor Lynch had trouble with several of his captains, but of all Captain Heywood was the most troublesome. He was in command of the "Norwich", which was wrecked in 1683. Lynch held an inquiry into the causes of the loss of the vessel and found that Heywood had engaged in trading, contrary to orders, and had over-loaded the ship. His action in court-martialling Heywood, however, was questioned at home and a circular letter was sent out to all colonial governors forbidding them to hold court-martials and requiring them merely to send home upon

occasion any officers or men for trial; all that was to be done in the colony was to collect the necessary depositions.¹⁾

A court-martial was the customary way of bringing a disobedient captain to book, but a court-martial required more officers than a colonial governor could often collect. There were so few ships stationed at Jamaica that often one frigate was all that could be found at Cagway or Port Royal, because the others were absent on duty, and the officers of one frigate were not enough to hold a court-martial; nor could their number be augmented by officers from ships engaged by the governor for the king's service, for these officers were not held to have royal commissions such as would alone entitle them to sit in a court-martial, yet a court-martial was generally held to be the only possible way of enforcing obedience on unwilling captains. It was for this reason that Sir Thomas Lynch asked in December 1683, first for power to take vessels into the King's service, and secondly to call courts-martial of officers appointed to command them.²⁾ A legal opinion on this representation of Lynch's declared that the proper

1) Cal.S.P.Col. A. & W.I., 1681-1685, Nos. 792, 793, 1065.

2) Cal.S.P.Col. A. & W.I., 1681-1685, No. 1482.

procedure against disobedient captains was by the oyer and terminer jurisdiction of the admiral.¹⁾ If Lynch had heard of this decision when he wrote to the Lords of Trade in the February following, he had not given up his intention, for he particularly asked for authority to hold courts-martial. Without this power Lynch knew he could not control the naval captains and he complained "that the captains of the king's ships minded his orders no more than a chapter in the Alcoran". Without the support of the navy the authority of the admiralty was as naught, for the navy alone could execute much of the admiral's work. Lynch must also have disliked the legal opinion because it confirmed the fact that a commander of a ship engaged by a colonial governor did not hold a royal commission, and did not, therefore, rank as a naval captain. In the end Lynch's wishes prevailed, and Sir Philip Howard was enabled, as Governor, to give his commanders power to hold court-martials against offenders at sea or in the ports of Jamaica; later it was arranged that officers and crews of the king's ships were to be exempt from admiralty jurisdiction, and were to be dealt

1) Cal. S.P.Col. A. & W.I., 1681-1685, No.1483.

with under the statutes of 28 Hen. VIII and 13 Car. II, relating to offences committed at sea and to naval discipline. The problem of how to deal with officers and men of the Royal Navy, who committed offences on shore, was left unsettled. Molesworth, even in 1689, was still unable to obtain any answer to enquiries on this point.¹⁾

It is clear that the admiralty court in Jamaica acquired in the period following the restoration a wider jurisdiction over prize and piracy than was the custom in any English vice-admiralty court. The growth of its power, however, alarmed the common lawyers in the colony, just as the growth of English admiralty jurisdiction had alarmed the common lawyers of England in the previous century. There were signs in Jamaica that the old dispute over the definition of "corpus comitatus" might become acute. In 1681 the Council was instructed to do its best to pass a law through the Assembly defining the limits of the parishes so that it be clearly known where admiralty law ended and the sway of common law began. The Assembly refused and the matter was thus left perforce to the decision of the courts.²⁾

1) Cal.S.P.Col. A. & W.I., 1681-85, Nos. 1065, 1482, 1483, 1484, 1563, 1578, 2055.

2) Cal.S.P.Col. A & W.I., 1681-1685, Nos. 227, 367.

The history of prize and piracy in the admiralty court of Jamaica has been written thus fully because it was in Jamaica that an admiralty court first came into full life. From the turmoils of naval war, from the prizes of the buccaneers and the spoils of pirates, in all of which Jamaica was more closely concerned than were other colonies, its admiralty court had drawn its life, its successive officers their emoluments. An account of the working of the Jamaican court is, therefore, a useful starting point from which to trace the rise of other colonial admiralty courts. Jamaica had established the precedent of an admiralty court with a wider jurisdiction than any English vice-admiralty court, and this precedent held good for other colonial admiralty courts as they came into existence.

CHAPTER VIII

PRIZE AND PIRACY IN OTHER COLONIES.

The work of organising vice-admiralty jurisdiction in other colonies besides Jamaica seems to have been begun about 1663. By that year the situation in Jamaica had been cleared up and the court founded under Lord Windsor was functioning regularly. The approach of war with the United Provinces, however, made more urgent the need of establishing other admiralty courts in the Empire, for war meant extensive privateering and privateers needed to be controlled through the admiralty courts. This was not of course the sole reason for extending the system from Jamaica to other plantations. Other motives applied to Jamaica as well as to the rest of the Empire, the desire to control trade, the wish to secure the rights of the crown and the admiral, but these must be considered later.

Before the Restoration there had been little need of prize courts except perhaps in New England, where the

struggles of royalist and parliamentarian broke the peace even in Boston harbour, and in Barbadoes where the expedition against the Spanish West Indies caused a special need to arise. But even in these quarters there had been no such pressing need as arose in Jamaica. Thus it cannot be claimed that the origin of the admiralty courts in all the colonies is to be found in privateering and piracy. Though this is true of Jamaica, it is not entirely true of other parts of the empire, where the circumstances which led to the growth of admiralty jurisdiction were very different. In New England and the other mainland colonies it was commerce, in Bermudas wrecks, that led the colonial councils, assemblies and courts to add the functions of admiralty courts to their other judicial duties. In Newfoundland and Maine it had been the fisheries and the great profits derived from them that had induced Gorges and Mason to try to establish a vice-admiralty system there. In this post-Restoration period these last colonies do not count, for Maine had fallen under the sway of Massachusetts and their stories merge into one, while the slow growth of settlement in Newfoundland and its peculiar form of government prevented any vice-admiralty system from developing

there until the second decade of the eighteenth century. This chapter then only takes into account the Carribbee islands, some of the mainland colonies of North America and the newly-acquired colony of Tangiers, where the Barbary pirates must have given occasion for much activity in the vice-admiralty court, that has left little trace in British records. Of the mainland colonies, Maryland was one of the last to be fitted into the imperial system of admiralty jurisdiction, chiefly because Maryland was a proprietary colony; but Virginia was almost as slow in developing specialised courts, largely because no crowd of privateers or pirates brought prizes into Virginian harbours. It was in the northern colonies and the West Indies that there was most activity; of Tangiers there is little to be said.

The first traces of the organisation of colonial admiralty jurisdiction outside Jamaica are, however, to be found in Barbadoes and Tangiers. In 1663 Francis, Lord Willoughby, found himself in a difficult position. In his opinion he believed that he was not only governor but also admiral, on the grounds that his patent from the king mentioned admiralty powers; he had however omitted to get an

admiral's patent from the Duke of York, who in the meantime had appointed a Colonel Barwicke or Barret, as he was alternatively called. When he found what had happened Willoughby wrote to England in great perturbation asking both Clarendon and Secretary Sir Henry Bennett to intercede for him with the Duke of York. Willoughby was probably greatly perplexed for when he received a grant in 1662 of a moiety of the revenue of the Carribbee Islands the office of admiral and the profits arising therefrom were expressly excepted, but the year after he was spoken of in his governor's patent as High Admiral and given power to hold admiralty courts. The Duke was pleased and issued a patent to Willoughby; the date of this patent is unknown for it was entered in the "Great Book of Warrants" now lost, and is only referred to in the patent issued to William Lord Willoughby in 1666/7.¹⁾

This lost patent is the first of the series appointing the admirals of Barbadoes and the Carribbee; all of these were governors with the one exception of Colonel Barwicke.

1) Clarendon Mem. ff. 5-6; Cal.S.P.Col. A.& W.I., 1661-1668, nos.478,617; Ad. 2. Out letters relating to Admiralty and Vice-Admiralty. f.17v.

who apparently never exercised his powers. Down to 1671 the Leeward Islands and Barbadoes were under one administration but this was apparently inconvenient for soon after William, Lord Willoughby, was appointed admiral a project arose among the planters and merchants, to divide the administrations of the Leewards and Barbadoes. John Champante, Lord Willoughby's agent, protested that this would infringe his lordship's patent as governor and vice-admiral of all the Carribbee, and the matter rested until 1671, when Sir Charles Wheeler was appointed Governor of the Leeward Islands. He did not receive a patent from the Lord Admiral though his patent from the king mentioned his power to act as vice-admiral under instructions from the Duke of York. It was not until 1677 that the separation was completed by the patent issued to Sir William Stapleton as vice-admiral for "the Island of St. Christophers and the rest of the Charibbee Islands, Lying to Leeward from Guadeloupe to the Island of St. John de Porto Rico."¹⁾ Henceforward there were two admiralties in the Caribbees.

1) Cal. S. P. Col. A. S. W. I. 1661-1668, no. 1615; Ibid., 1669-1674, no. 567; Ad. 2, Out letters relating to Admiralty and vice-admiralty, f. 34v.
1755.

The admiralty of Tangiers began about the same time as that of Barbadoes, or possibly a little earlier. The first patent extant is that granted to John Fitzgerald in June 1664, but it states that the form used is that of Lord Windsor's patent for Jamaica, and the Earl of Teviot's¹⁾, both of which were entered in the lost book of Warrants. The last commission to a vice-admiral of Tangiers was passed in 1682, for Col. Kirke, so that the admiralty court did not exist for very many years, nor are there any traces of its activity beyond one salvage case to be discussed later and the appointments of three admirals and two judges. Still the one case shows that it was not a still-born court as Marsden suggested in his article on vice-admirals.²⁾

These colonies were the first after Jamaica to receive an organised admiralty system. The mainland colonies were left out of the system for over fifteen years and admiralty business had to be transacted by the ordinary courts. This

1) Andrew, Baron Rutherford, Earl of Teviot 1662, Governor of Dunkirk of Tangiers 1662, ob. 1664. The lost patent may have been an admiral's patent for Dunkirk, but was more probably one issued to him for Tangiers, when he became governor of that possession.

2) Ad. ²1755, Out letters relating to admiralty and vice-admiralty, ff. 17, 8, 18 v, 33 v. E.H.R. vol. xxvi, p 53.

seems almost inexplicable for it cannot be attributed entirely to the strength of existing institutions or why should Barbadoes have been one of the first to receive a vice-admiral, nor in the case of New York can it be due to the fact that the Dutch colony only came under English rule in 1664, for Tangier received a vice-admiral very soon after entering the Empire. The truth is that no one explanation can be given, the delay being the result of many causes, such as the strength of local institutions in New England and Maryland and the respect for Dutch customs in New York. The one great cause was that there was little need for admiralty courts in the mainland colonies before the period of the first systematic attempts at the suppression of piracy and privateering in the West Indies. This period lasted throughout the seventies, and the pirates, meeting with scant welcome at Port Royal and other West Indian ports, moved northwards in search of fresh markets and victualling stations in the Bahamas, the Carolinas, Pennsylvania, New York and New England. The arm of the admiralty did not reach to the Bahamas and Carolinas, where little could be

done to check piracy, but in the other plantations vice-admiralties grew up between 1678, when Sir Edmund Andros received the first admiralty commission for New York, and 1697 when the colonial admiralty was organised for the whole Empire on an uniform pattern.¹⁾ Before 1678 such prize

business as there was in these colonies was carried out by the existing courts or else was referred to England. In New York, for instance, the mayor and aldermen were accustomed to sit on occasion as a vice-admiralty court and even before 1678 had condemned a vessel as a prize. The circumstances of this case were, however, to some extent peculiar; the ship in question belonged to Boston, was seized by the Dutch at the recapture of New York and, when the city once more fell into British hands, was for that reason condemned as a prize by the self-constituted admiralty court at New York. When the Boston owners claimed her from the court Governor Andros wrote to the Lord Admiral for advice; the Duke of York replied through his secretary, Sir John Werden, that the governor and council could

1) For dates of appointments see Appendix.

not reverse the judgement already given.¹⁾ Andros had received his patent as governor from the proprietor, the Duke of York, in 1674, but though he did not receive a patent as vice-admiral until 1678 he seems to have considered himself possessed of admiralty powers in virtue of his position as deputy of the man who was lord admiral.

The government must have expected a good many prize cases to arise as a result of the Dutch wars for in 1665 the Duke of York had been authorized to grant commissions to vice-admirals of foreign plantations to issue letters of marque against the Dutch and to dispose of all prizes taken under such letters according to usual legal process.²⁾

Prize commissioners were appointed for the Carribbee Islands and blank commissions were issued to Sir Thos. Modyford, Sir Wm. Berkeley the commissioners for New England and to Sir Thos. Temple to appoint fit men to carry on the work in their respective districts.³⁾ Governor Nicholls of New

1) Documents relative to the Colonial History of New York. vol.III, pp.233, 260.

2) Cal.S.P.Col. A.& W.I. 1661-1668, no.910.

3) Ibid., no.919.

York, who was himself one of the two sub-commissioners for prizes for New England, wrote in 1664 to ask the Governor and Council of Boston to set up an admiralty court to try Dutch prizes.¹⁾ But none of this organization seems to have resulted in a harvest of prizes. John Reid, who in 1665 was appointed prize-officer for Barbadoes at a salary of £200 per annum, reported in 1666 that no prizes had been brought in,²⁾ and there is no trace of prize cases in any other colonies. Probably the Dutch were too welcome as traders in many ports.

Such prize cases as have left traces fall into three classes, those in which the ships were seized for breach of the Navigation Acts, those in which the ship was taken under letter of marque or reprisal, and those in which the ship was recaptured or salvaged. Only two cases belonging to this last class have left traces, one in Tangiers in 1669, the other in New York in 1696. The two cases differ slightly. The earlier case shows that a ship called "The

1) New York Documents, vol.III, p.67.

2) Cal.S.P.Col. A.& W.I. 1661-1668, nos.985, 1127.

Mary and Elizabeth", belonging to John Gould and Josiah Child of London, had been captured by Saltee rovers, recaptured by the Tangiers ketch and brought into harbour as a prize. Her crew had all been taken off and sold into slavery. The owners petitioned the Lord Admiral for restitution of the ship on payment of salvage, and an order was sent to the Earl of Middleton, governor and Vice-Admiral of Tangiers, to determine the proper salvage and hand over the ship as soon as the owners paid over the sum fixed. This sum may have been determined in the admiralty court, probably was determined there, or may have been arbitrarily fixed by the Admiral; but the order proves that the admiralty of Tangiers did function.¹⁾

The New York case both raises nice points of law, and illustrates the methods of the navy in getting prize-money. The admiralty court met at the City Hall of New York on 2 November 1696 before William Pinhorne,²⁾ Judge of the admiralty. Capt. Hohn Evans, of the Richmond

1) ²
Ad.1755, Out-letters relating to admiralty and vice-admiralty, ff. 23v., 24.

2) ~~Probably~~ William Pinhorne who was Recorder of New York City and a judge of the Supreme Court 1691-1692, Counsellor and Judge of the Supreme Court 1693-1698. Documents relating to New York, vol.iii, p.716, n.2.

frigate, sued the ship "Sarah and Ellinor" for an eighth part as salvage. The "Sarah and Ellinor" had been seized by the "Richmond" off Sandy Hook and brought into New York, Evans claiming that she was recaptured from the French. About five or six weeks before she fell in with the "Richmond", the "Sarah and Ellinor" had been taken off the coast of Florida by a French man-of-war, the "Gaillard"; a prize crew had been put on board in place of some of the English, and orders were given that the prize was to be brought into the bay of St. Luce in Cuba. The strength of the Gulf Stream and a great storm drove the prize out into the Atlantic, killed the Frenchman described as the "artist", and left the survivors ignorant of their position. After the death of the "artist", there seems to have been only one man who was skilled in navigation and since the French and English were each unable to work the ship without help from their enemies, they all agreed to make their way to the nearest port in America, which was of course English. Afraid of savages in Florida they sailed northwards and finally got a pilot from a sloop they fell in with, who laid a course for New York, since he knew that port better than Philadelphia. A league and a half off

Sandy Hook the "Sarah and Ellinor" fell in with the Richmond, which was stationed at New York to protect English commerce against French privateers, whose base was at Louisbourg or Quebec. The Frenchmen on board the "Sarah and Ellinor" must have felt perturbed because they had been assured that no man-of-war was stationed at New York and that there was no prison in the city. The whole case turned of course on the relations of the French and English after the "Sarah and Ellinor" had suffered the gale; in whose possession was the ship when the decision was made to sail for an English port, when the pilot came aboard from the sloop, and especially when the "Richmond" fell in with her off Sandy Hook. The evidence points to an amicable arrangement having been made by French and English under pressure of wind and weather, and that the English became the dominant party after the French "artist" or navigator was killed. Unfortunately the national pride of the French did not allow them to confess this, and Captain Evans was able to make out something of a case for salvage.

Only the evidence given in this case has survived in a certified transcript among the Rawlinson Mss. The transcript shows that the court met on the 2nd, 3rd and

6th of November, but either the court did not follow the procedure of civil law entirely or much has been condensed into the phrase "information read" with which the proceedings begin. The first step should have been the entering of the libel but this is nowhere mentioned. The defendants are not the owners of the ship, nor even the cooper who was the chief officer of the English, but four citizens who had been appointed to take charge of the ship and lading. Probably the transcript has not included the libel and the court did follow admiralty procedure because the case is conducted on similar lines to other cases before colonial admirals, and admiralty terms such as "interrogatories" and "register" are used.¹⁾ The transcript however stops before the conclusion of the case, and the decree is not given. Possibly the case was appealed to England and that is why the transcript was sent over, but in that case it seems odd that the whole proceedings were not transcribed. Without the decree there is no knowing if Evans got his salvage, nor what happened to the unfortunate Frenchmen who gave evidence in chains.¹⁾

1) Rawlinson Mss. B. 383, ff.397-406 v. Register is the seventeenth century form of registrar.

There is no other such detailed account of proceedings in any case of a ship taken under letters of marque or reprisals and brought for condemnation to any of the colonies dealt with in this chapter. Prize cases did of course occur from time to time, but most of the prizes were taken for breaches of Navigation Acts or monopolies of trade. Naval prizes did not always come before the colonial courts for condemnation because naval expeditions often used their captures as auxiliary ships and brought them back to England for trial, though the instructions given to commanders were to sell all prizes taken on the outward voyage on arrival at their destination and to bring home all captures made on the return voyage.¹⁾ Prizes must however have been brought into Barbadoes for in 1677 the Governor, Sir Jonathan Atkins, was ordered by the Lord Admiral to pay over to Colonel John Stode "the effects and all the proceed of the One hundred thirty six Negroes, as also of the dust gold taken in the ship Maria, by his Majesty's ship Phoenix". The prize goods had been put into Atkins's hands as admiral of Barbadoes, and this award to Stode had been made by the

1) Cal.S.P.Col. A.& W.I. 1661-1668, no. 1573.

2) ²
Ad. 1755, Out-letters relating to Admiralty and Vice-admiralty p. 35.

King and Council out of these goods. Two years later the King and Council wished to dispose of another of the Phoenix's prizes, but Atkins was not willing to agree. In 1675, during the Dutch war, the "Phoenix" had brought in a Dutch East-Indiaman, the "Asia". For four years the ship had lain in Barbadoes, "leaky and well-plundered", until the King and the English Admiralty were induced to consent to her return to the Dutch East India Company. Orders to this effect were sent to Sir Jonathan Atkins but he replied that his admiralty commission was from the Duke of York and not from the English admiralty.¹⁾ He also wrote to the Duke of York, but neither this letter nor the reply have been discovered. There is, however, nothing to show in either of these cases how the prize was condemned. Atkins may himself have acted as judge, or he may have created a specially appointed court. Since the first mention of an admiralty judge in Barbadoes does not occur until 1696, Atkins probably presided himself.²⁾ A registrar is, however, mentioned about the same time as the case of the "Asia": he was "one Jones" who obtained patents for the

1) Cal.S.P.Col. A.&W.I. 1677-1680, no. 914.

2) Ibid., 1696-1697, no. 380.

Post Office and admiralty registry of Barbadoes, and exercised both offices by deputy. Jones was not the first registrar, for he proving an idle and worthless fellow, the grant of the admiralty registry was revoked by Privy Seal in favour of the man who had previously held the position.¹⁾ The existence of a registrar makes it more probable that Atkins followed the Jamaican practice and did not appoint a special court.

No further prize cases, arising from privateering, can be traced until war broke out with France after the Revolution of 1688. Then privateering became very general and for the first time prize jurisdiction became a matter of general imperial importance. There was apparently some doubt as to whether a vice-admiral's powers were sufficient to enable him to hold a prize court. Governors Kendall and Russell of Jamaica and Barbadoes raised the question in May 1693 with the Lords of Trade and Plantations, who consulted Sir Charles Hedges, Judge of the Admiralty Court, and the Law Officers. Commissions were drafted and discussed, empowering the two governors to erect courts of reprisal in their respective plantations.²⁾ Towards the end of the

- 1) Ibid., 1677-1680, no. 13623-1696, no. 312, 323, 365, 368, 375.
 2) Cal. S.P.Col. A. & W.I., 1693-1696, nos. 312, 323, 365, 368, 375.

month the committee was discussing the limits of the jurisdiction of the prize courts in America, and it was suggested to the admiralty that the jurisdiction should be "Betweene the first Meridien Line or Degree of Longitude according to the Reckoning of Ptolemy^c (or of the Meridien or Longitude of the Island of Palma Westward) and the Continent of America and in any of the Seas Bays Harbours ports Creeks or Rivers of in or belonging to the said Continent of America, and of all ships Vessells and Goods taken elsewhere in the Seas by any of our Ships of Warr or any of our subjects Ships to ye Westward of the Meridien or Longitude of the Cape de Finisterra in Gallice provided such of our Ships of Warr and such of our Subjects Ships aforesaid shall be on their Voyages bound to some of our Islands or plantations in America and not otherwise." The Admiralty did not agree to this and suggested that the jurisdiction of American prizes courts should be to the west of Foyal; This the Lords of Trade and Plantations agreed to on 12 June 1693.¹⁾

Jurisdiction thus settled, it only remained for the

^c C.O. 323/1.
1) ~~Board of Trade, General 2, no. 58;~~ Cal.S.P.Col. A.& W.I. 1693-1696, nos. 378, 390, 393.

admiralty courts to function. Even after this discussion there were still hitches; in 1694 Copley, the governor of Maryland, found his commission did not allow him to erect a court to try a French prize and the Board of Trade had to send out special commissions.¹⁾ In Nevis a special court was set up by a commission from Christopher Codrington, Governor and Vice-admiral of the Leeward Islands. He empowered Colonel Samuel Gardner as Lt. Governor and Deputy-Vice-Admiral of Nevis to call several of the Council to his assistance, and with them to hold a Court of Admiralty. The occasion arose from the capture of a French ketch by H.M.S. Wolf on 5 April 1694. The commission was issued on 12 April and the court met five days later, so that condemnation followed rapidly on capture. The court consisted of Gardner and four assistants, one being Major Wm. Burt, who had at one time acted as Deputy-Vice-Admiral. John Perrie, a commissioner for Prize in the Leeward Islands, acted as advocate and conducted the prosecution. Evidence was taken that the ketch, the Katherine of Martineco, was

1) Ibid., no. 1167.

captured by a pinnace from the Wolf, and, upon a confession of the master and a mariner, that she was a French ship the court proceeded at once to condemn her as "Lawfull Prize and purchase of Warr."¹⁾ A similar proceeding was followed in Virginia in 1697, when the governor and council appointed a judge and officers to hold an admiralty court to try a French prize.²⁾

These special courts were undoubtedly properly constituted courts, but sometimes prizes were condemned in courts of dubious legality or were never condemned at all. There is for instance nothing to show that Captain Tew, the pirate, ever brought prizes into New York under the letter of marque he received there from Governor Fletcher. Tew announced his intention of suppressing piracy in the Gulf of St. Lawrence, but he probably regarded Fletcher's Letter of Marque simply as a safe-guard against being hanged for a pirate if he were captured.³⁾ Lieutenant-Governor Usher of Newcastle found himself in 1696 quite unable to force a pri-

- C.O. 155/1.
- 1) Col. Ent. Br. vol. XLVIII, pp. 286, 287.
 - 2) Cal.S.P.Col. A.& W.I., 1696-1697, no. 1078.
 - 3) Documents relative to New York, vol. IV, p. 274.

vateer, one Captain Mould, to keep the terms of a letter of marque he had received from Usher. Mould was bound to bring his captures into the port of his commission, but ignoring this clause he took them into Boston, which was a better market for prizes. Usher, after having ordered him in vain to return to Newcastle, wrote to Stoughton, Lieutenant-governor of New Hampshire, asking him to take Mould's prizes into custody or to see they were condemned in a properly constituted prize court. This Stoughton apparently could not do, for Mould disposed of the prizes in Boston, one being bought by the council of Massachusetts as a fire-ship for the sum of £305.¹⁾

By the close of the period of which this monograph treats, there had come into being a system of prize jurisdiction which extended all over the empire. Jamaica had been its origin, had laid down many of its precedents, and these had been modified by the other colonies as they developed their own courts. Where no admiralty court was already functioning special courts were formed to meet an

1) Cal.S.P.Col. A.& W.I. 1696-1697, nos. 284, 284,i, 350.

emergency, but the same practices held in regular and special courts alike. But though the system was in being, though the limits of jurisdiction had been laid down, much needed to be done before the prize courts of America and the West Indies were strong enough to control the privateers and pirates, who raided merchant shipping under cover of commissions from colonial admirals. These developments, however, belong to a later period, and we cannot here follow the prize courts of the Old Empire beyond these first beginnings of their work of spreading English maritime law throughout the seven seas.

CHAPTER IX.

THE COLONIAL ADMIRALTY COURTS AND THE TRADE OF THE EMPIRE.

The men who framed and signed the Declaration of Independence in 1776 complained among other things of "attempts to extend an unwarrantable jurisdiction."¹⁾ This jurisdiction was that of the colonial admiralty courts recently re-organised by the British parliament. This is not the place to discuss the extension of jurisdiction that took place during the eighteenth century but the following chapter will show the foundations of the jurisdiction which was thus detested, and the causes of that later detestation. To a great extent the admiralty courts met a need and were on the whole popular institutions, but, while they were liked both for providing a source of profits by condemning prizes and dealing expeditiously with commercial disputes, they were disliked for the part they played in enforcing the trade laws of the empire.

1) ed. Francis Newton Thorpe, The Federal and State Constitutions, colonial charters, and other Organic Laws of the States, Territories, and Colonies now or heretofore forming the United States of America, vol.1, p.6.

Prize and piracy laid the foundations of the system of admiralty jurisdiction in many parts of the empire but it was the acts of trade and navigation that built the later edifice. Prize and piracy depended on war, and even beyond the line war was transitory, while trade was ceaseless; in war and in peace the harvests of the plantations were sent across the Atlantic to pay for the westward bound goods of Europe.

The duty of controlling and supervising trade had always been considered of high importance by the British government, and the inclusion in the committee, responsible for the colonies, of merchants, who were prominent in imperial markets, led to legislative activity. The long series of Acts of Trade and Navigation were intended to achieve three objects; by reserving the carrying trade of the empire for ships of England, Ireland, Wales, the plantations, and Berwick on Tweed, it was hoped to increase the merchant navy; by insisting that all European produce must be shipped via England it was hoped to increase the customs revenue and make England the imperial entrepôt; finally by enumerating articles of colonial produce which had to be shipped direct to England it was hoped to secure economic

independence.¹⁾ The details of the statutes do not for the most part concern us here, but it is necessary to know something of the provisions, for in the course of thirty odd years the colonial admiralty system and the trade policy of the government became closely connected. The growth of that connection must be traced in this chapter.

In 1651 the parliament of the Interregnum had passed an act prohibiting the importation of goods into any part of the British Empire save in ships belonging to British citizens, manned by a crew "for the most part" British. The penalty for breach of this act was forfeiture and loss of the ship, cargo and tackle; one half of the value of the seizure was to go to the government, the other to the informer, who might prosecute his case in any court of record.²⁾

This act ceased to be valid with the restoration of King Charles, but one of the first statutes passed by the new parliament was identical in purpose. The statute of 12 Car.II c.18 is more particular in its provisions; the crew, for instance, must be three-fourths

1) For information on the Acts of Trade see Cambridge History of the British Empire, vol.I, chap.IX, The Acts of Trade by Prof. C.M.Andrews.

2) Acts and Ordinances of the Interregnum, vol.II, p.559.

English, and it is definitely stated that, besides suit being brought in any court of record, "all Admirals and other Commanders at Sea of any ships of War or other Ship haveing Commission from His Majesty or from his Heires or Successors are hereby authorized and strictly required to seize and bring in as prize all such Ships or Vessells as shall have offended contrary herunto and deliver them to the Court of Admiralty there to be proceeded against....." The Act of Trade passed three years later does not mention the Admiralty court, but the "Act to prevent the planting of Tobacco in England, and for regulating the Plantation Trade"¹⁾ expressly states that all vessels seized for breach of the act are to be prosecuted in the "Court of the High Admirall of England, or of any of his Vice-Admiralls, or in any court of Record in England, wherein noe Rescoyne, Protection or Wager at Law shall be allowed." The last of the Acts of Trade, with which we are here concerned, was passed in 1696.²⁾ To a great extent this act codifies preceeding legislation but there are two new points of importance in the history of

1) 22 and 23 Car.II, c.26. Tangiere was expressly exempted from this act.

2) 7 and 8 Gul.III, c.22.

the admiralty courts ; the first is the proviso that ships, which have been duly condemned as prizes in any of the admiralty courts of England, Ireland or the colonies, should be counted as free bottoms; the second is that suit should be brought "in any of His Majesties Courts of Record att Westminster or in Any Court in His Majesties Plantations where such Offense shall bee committed."

There is little to show in these statutes that the admiralty courts in the colonies came to be the proper places to try all breaches of the Acts of Trade, and nothing to explain how this came about. It was however a natural development for there was little difference in the trial of a ship captured by a man-of-war or privateer in time of war, and the trial of a vessel seized for trading illegally. In both cases the verdict depended on the evidence of sea-faring people, and in both cases technical knowledge was necessary. Moreover it was far easier to enforce the Acts of Trade in courts where proceedings could be brought in rem than in the common law courts, where proceedings could only be brought in personam. There was however a third cause which contributed to the growth of this side of the business of the admiralty courts. It had long been customary for

the great trading and colonising companies to sue in the High Court of Admiralty all who infringed their trading monopolies. The East India Company, the Muscovy Company and others all appear as libellants in the early seventeenth century against "interlopers", as unauthorized traders were called. In the same way the vice-admiralty courts were called upon in the colonies to enforce trading monopolies; of these the most important was that enjoyed by the Royal African Company, who held a monopoly of trade from Sallee to the Cape of Good Hope. This monopoly gave the African Company the sole right to import African goods and negroes into the British colonies, and colonial governors were earnestly enjoined to uphold this right. So great was the demand for slaves that smuggling was common, and many interlopers were taken. For the most part these interlopers were tried in the admiralty courts. Breaches of Acts of Trade differed little from breaches of trading monopolies, and there is really no distinction in procedure between trials of interlopers and those who contravened the Acts of Trade.

Besides, however, the convenience of trying these cases

in the vice-admiralty courts there was from the point of view of the home government a distinct advantage to be gained. Generally the courts of the colonies were dependent on the government of the colony, and only dependent on the home-government in so far that the governor appointed the judges. The vice-admiralty courts were, however, far more closely linked to English administration. A vice-admiral could only act under a patent from the lord admiral or commissioners exercising that office. He was in no way dependent on the colonial government; his pay was drawn from the fees of the court or other droits and was not dependent on a vote of the legislature; finally he could only be dismissed by the lord admiral. The result was that the vice-admiralty courts could act in the face of public opinion in the colonies as no other courts dared to act, and could try to enforce unpopular statutes upon unwilling colonists. The Acts of Trade were unpopular, especially so because the colonists had known free trade during the Civil War, and there was continual friction between the officials who had to enforce the Acts and the colonists who wished to evade them.

Before going on to particulars of the work of the admiralty courts in enforcing the Acts of Trade, something must be said of the legal position of the admiralty courts. The Acts of Trade had all laid down that suit might be brought in a "court of record," but there were two opinions as to whether the admiralty courts could claim to be courts of record. This was really the old subject of dispute between the common and civilian lawyers. It was claimed that a court of record must in the first place be a king's court, and that, in the opinion of the common lawyers, the admiralty court was not; the civilians argued that the lord admiral was one of the king's officers of state and that his court was therefore as much a king's court as the King's Bench or Common pleas. The importance of the status of a king's court was that the formal records of such a court could not be disputed. These records were kept on parchment rolls, but the admiralty court, like others of the prerogative courts of the sixteenth century, kept no such rolls. Its records were for the most part only on paper, and were kept in files. This technical difference was of supreme importance in the eyes of the common

lawyers. It was moreover generally accepted that no writ of error lay in any court but a court of record, and Coke claimed in addition that only a court of record could inflict fines and imprisonment. This last point of view was, however, never generally accepted and the admiralty court fined and imprisoned as need arose like the Star Chamber and other prerogative courts. The victory of the common lawyers came with the civil wars, but under the Restoration admiralty courts gained ground in the colonies, though the High Court of Admiralty at London lost almost all business save prize. Doubts persisted though, and as late as 1702 an argued opinion was set out by J. Cooks proving that the admiralty courts were courts of records and were intended under the Acts of Trade to try all cases of "unlawful importations to or exportations from the plantations."¹⁾

In the plantations, however, the authority of the admiralty courts depended greatly on the personality of the governor, who was generally the vice-admiral, and on his power to execute the decisions of the courts. Where there were royal ships and the governor could rely on the assistance

1) Rawlinson B. 383, ff. 545 and 546.

assistance of the captains commanding them, the admiralty courts were fairly successful in enforcing the Acts of Trade, but without the help of the navy nothing could be done. Sir Thomas Lynch wrote in 1682 of the impossibility of checking interlopers at Jamaica unless there were more royal ships stationed there, and declared that once a cargo of negroes had been landed no judge nor jury would allow seizure.¹⁾ When a governor and a naval captain were at loggerheads the admiralty courts were generally unable to act. Nowhere is this better shown than in the case of the "Providence" of London. The case was a complicated one involving proceedings not only in the colony but also in London, and what the final result was we have no means of knowing. The story so far as we can follow it, is as follows.

The "Providence" was taken off Nevis in June 1682, by Captain Billop. Instead of bringing the "Providence" into Nevis for condemnation, Billop, who was captain of the ketch Deptford, took the Providence down to St. Christopher's and there plundered her of ivory, red wood, copperas, wax, negroes and other commodities. When the

1) Cal.S.P.Col. A.& N.I., 1681-1685, no.668.

ships returned to Nevis governor Sir William Stapleton tried at the trial of the Providence to find out the amount that had been taken, but it proved almost impossible to get evidence as Billop prevented the men from bearing witness. A special commission was appointed to enquire into the plundering of the Providence and the account was forwarded to England, whereupon Billop flitted from Nevis rather than stand his trial. After he had left Stapleton found evidence that Billop had also plundered a Rochelleais ship at Antigua, and he added this to his indictment of the captain. The Lords of Trade supported the governor by asking the Commissioners of the Admiralty to stop Billop's pay until he had answered the charges; the Admiralty replied that although a court martial had already acquitted Billop of embezzlement of prize goods, since he had been proved guilty of coming home without permission he should be detained until Stapleton's promised evidence should arrive. The Lords of Trade, however, were not satisfied with the court-martial and took legal opinion, and the Attorney General and the King's Advocate declared that the court-martial ought to be set aside and that Billop ought to stand his trial in the admiralty court at Nevis. Meanwhile proceedings had been

begun against Billop at New York for he had consigned some of the negroes and goods out of the "Providence" to that city. The owners had them seized, brought a case there in the mayor's court, which acted on occasion as an admiralty court, and got a judgement against Billop for £1,140. In 1685 Billop petitioned the king for an order to the mayor of New York to stop execution and to permit an appeal to the Lords of Trade. The petition was read and re-read, and appeal was allowed. The verdict, however, has not been preserved, as there is nothing to show if Billop was ever properly punished for flouting the authority of the vice-admiral of the Leeward Islands.¹⁾

Captain Billop was not the only naval captain who flouted a colonial admiral. In 1671 Sir Charles Wheeler arrived at Nevis to take up the position of governor of the Leeward Islands. Among the ships which had escorted him was H.M.S. Assistance, commanded by Captain Hubbard. A few days after arrival Hubbard seized the "James" of Belfast, as she lay in the roads, for breaking the Acts of Trade. Wheeler found it hard to act for he had not re-

1) Cal.S.P.Col. A.& W.I., 1681-1685, nos.572, 601, 602, 604, 607, 661, 684, 752, 762, 1106; Documents relative to New York, vol.III, p.365, 366, 367.

ceived any instructions from the Lord Admiral about erecting admiralty courts; he therefore proposed sending the "James" to Montserrat for trial in the admiralty court there. To this Hubbard would not agree and, but for the "James" springing a mast, would have carried her to Jamaica for condemnation. The mishap forced Hubbard to leave the "James" at Nevis, where Wheeler had her condemned in a specially appointed court, thus making sure of his share, as governor, of the forfeiture.¹⁾

Nevis seems to have been specially unfortunate for it was from that island that Governor Sir James Russell wrote in 1687 to the Lords of Trade complaining of the behaviour of Captain St. Loe of H.M.S. Dartmouth. He seems to have disobeyed orders continually. At one time he disposed of an Irish ship, which was condemned for trading illegally, and sold her cargo of provisions to the Dutch at St. Eustatia; at another time he was almost as troublesome in a case concerning Bartholomew Sharpe, who was accused of piracy. Sharpe was at Bermuda, and thither Russell sent the "Dartmouth" to arrest him. It was full two months before St.

1) Cal.S.P.Col. A & W.I. 1664-1674, nos. 567, 5671. 56711, 631, 680.

Loe returned to Nevis, for he had visited Boston in the meantime on pretext of re-fitting the ship. On his return the governor and the captain quarrelled over Sharpe's trial, for St. Loe said the governor had appointed special admiralty judges who had not been sworn and who had, moreover, refused evidence from a Spaniard and a Christian Indian, and that furthermore the governor would not pardon Sharpe's men who were ready to turn king's evidence. Russell, on the other hand, declared that St. Loe had never brought Sharpe's ship in for condemnation, and complained of St. Loe's insolence. The report of the trial shows that St. Loe was anxious to get Sharpe convicted, for when the bill was thrown out he suggested that the crimes set down in the indictment had been committed near Jamaica, and that the trial ought properly to be held there. If Russell had not already been angered by St. Loe's disobedience in this case, his action in selling the Irish provisions at St. Eustatia might have been smoothed over, but Nevis was short of food when St. Loe sold the cargo to the Dutch, and Russell vented his anger in a bitter report to the Lords of Trade.¹⁾

1) Cal.S.P.Col. A.& W.I., 1685-1688, nos. 1094, 1111, 1356.

The Irish provision ship must have been the "O'Brien", which St. Lee had arrested in April 1686, before he had quarrelled with Russell. The Dartmouth, indeed, took three ships in all for breaking the acts of trade, two Irish vessels in April and a Frenchman in June; of these the "O'Brien" and the Frenchman were condemned and the "Esther" of Dublin was acquitted. When the ships were brought into Nevis there was no regular admiralty court sitting and the governor called a council to nominate the judges. There were already two commissions of admiralty in existence, one to Sir James Russell and others dated 1st April 1682, the other to Col. William Burt and others dated March 1685; these had both been issued by governor Sir William Stapleton. Before Russell's arrival Burt had acted as deputy governor, but the revocation of his commission of deputy governor did not mention his admiralty commission, and the Council began by deciding whether Burt was still a judge of admiralty or no. It was held that he was, and the following were appointed to hold an admiralty court:- Col. Burt, Maj. Jorge, Philip Lee, Henry Carpenter and Capt. Michael Smith.

The judges sat the same day that they were appointed

and condemned the "O'Brien" on the grounds that she was an unfree ship being foreign-built though Irish owned. Two carpenters, one of whom belonged to the O'Brien, deposed that she was Swedish, Danish or Dutch, and the master, Richard Want, himself said he did not know if she were free or unfree. Want was not as clever as the master of the "Esther", for when the same charges of trading contrary to 14 Car. II were brought against the "Esther", her master pleaded that he had broken no statute on five grounds; that he was on his lawful occasions; that he had committed no offence in exporting candles from Dublin, for the offence could only lie in importing them into a colony; that he had cockets from the Dublin Custom House proving he had paid all duties; that a ship had been acquitted in Jamaica for importing candles on the ground that these were provisions;¹⁾ lastly that he could incur no penalty before breaking a statute.²⁾

The owner of the "O'Brien" did not accept the loss of the ship quietly and appealed to the king against the sentence on the grounds that the proceedings of the court were

1) cf. case in which soft soap was held by a Jamaican jury to be provisions, Col. S. P. Col. A. & W. I., 1677-1680, no. 1304.

2) *C.O. 1/59,*
~~Col. Rep., vol. LVII~~ no 51.

contrary to law. The Lords of Trade took legal opinions from Sir Thomas Pinfold, Mr. Sergeant Pemberton and Sir Thomas Exton, as to whether a ship could be legally taken for breaking the Acts of Trade out of sight of land and a thousand miles from her destination. Both Pinfold and Pemberton answered briefly that no penalty had been incurred. Exton's answer was longer; he made the same point as Pinfold and Pemberton, but in addition took into consideration the Customs House certificate from Dublin, which showed that bond had been given according to the statutes. His conclusion was that the condemnation and seizure were illegal, but he advised the Lords of Trade that it was very difficult to redress the owner's grievances. There was no regular appeal from the colonial admiralty courts, so that the only way of reversing a judgement given in one of these courts was by exercise of the royal prerogative. As Judge of the High Court of Admiralty Exton was helpless; all he could do was to advise aggrieved parties to petition the king, and he pointed out that if appeals were not admitted it was almost impossible for men, living in the British Isles, to get redress in a colonial court some

thousands of miles away. Exton urged the need of some regular channel of appeal comparable to that from the High Court of Admiralty to the Court of Delegates.¹⁾

Exton spoke as if such miscarriages of justice as that in the case of the "O'Brien" were comparatively common. A system which gave a considerable share of the profits of condemnation to the governor who, as admiral, controlled the court which tried, and the captain, who arrested a ship, was bound to foster abuses. The sentence on the "O'Brien" is perhaps less surprising than the acquittal of the Esther. Nevis, however, must not be unduly blackened for St. Loe's third capture, the sloop "Blessing", proved to be a French bottom navigated by a Scotchman and was duly confiscated; after St. Loe had left for England the court acquitted two New England ships of interloping.²⁾

Even where the governor and the admiralty court were vigorous it was hard to enforce the Acts of Trade and to prevent interloping. The case of Captain Mingham of the

1) Cal.S.P.Col. A.& W.I. 1685-1688, nos. 621, 627, 910, 931, 931 VII; C.O. 1/60 nos 83 VI, 83 VIII, ~~83~~.
C.O. 1/59 no. 51.

2) ~~Cal. S.P. Col. A. & W.I. p. 57; Ibid., pp. 43-51.~~
C.O. 155/1.

pink "Francis" shows how hard it was even in Jamaica, where Sir Henry Morgan was more anxious to suppress smuggling than privateering. In the spring of 1679 the "Francis" arrived at Port Royal and Mingham declared his cargo to the customs officer. He concealed, however, the existence of a quantity of brandy and cherry brandy. Somehow the customs officer heard of the hidden liquor and the matter came to a trial in the admiralty court before Sir Henry Morgan, who admitted that he was not appointed for any understanding of the law. The ship was condemned for making a false entry and sold by the Receiver-general, Mr. Martin. Mingham bought back the "Francis" and returned to England, where he got an order from the Lords of Trade presumably for reversal of the sentence and the return of the purchase money. The stories told by Mingham and the Jamaican officers do not agree either as to the quantity of the concealed liquor or as to the amount of the purchase money. Mingham informed the Lords of Trade that he was condemned for two casks of brandy and forced to pay £800 for the "Francis", but Morgan declared that Mingham had concealed two butts of brandy and twenty casks of cherry brandy, and that he had only paid

£300 for the ship. Lord Carlisle, as admiral, confirmed Morgan's statement and said that he had intervened on Mingham's behalf. When Mingham reached Jamaica early in 1680 he served orders on Carlisle, Morgan and Martin, the last two of whom replied by suing him in the Grand Court for publishing a scandal in his petition to the Lords of Trade. The court granted the admiralty judge and the receiver-general £2500 damages on account of the scandal, and committed Mingham to prison for refusing to pay. Mingham later complained that he was confined with the slaves until he consented to fortify as a prison an upper room at his own expense. When news of his imprisonment reached England, his wife, Dorothy Mingham petitioned the Lords of Trade on his behalf, and an order was sent out that on security being given in Jamaica for £2500 Mingham was to be set free to return to England and there answer his complaint, that Morgan and Martin had trumped up the original case for the sake of lining their pockets. Martin pleaded that he had surrendered his share to the fund for erecting an exchange at Port Royal, and, in 1680, Carlisle declared that Sir Henry Morgan had not even received his fees as ad-

miralty judge. Nevertheless the Lords of Trade decided that the condemnation of the "Francis" had been unjust and the action for scandal contemptuous to His Majesty's Board; The £300 was to be returned, but as there had been reasonable grounds of suspicion costs were not granted; Mingham was to be left to take legal steps against Morgan and Martin for damages, and the fees for his imprisonment were to be paid by these two in proportion to the damages granted them.¹⁾

The majority of the cases which it is possible to trace in the English records were either appealed in the same way as in Mingham's case, or else raised some point of law or policy on which the colonial admiral felt it necessary to consult the Lords of Trade. Such a case arose in 1686 when Captain Talbot seized a logwood ship, the "Swallow", and brought her before the admiralty court in Jamaica, for, by doing so, he raised the whole question of the legality of the logwood trade on the Mosquito Coast, which was claimed by both England and Spain. The "Swallow" was acquitted on the grounds that she had already been seized and condemned as prize in the admiralty court

1) Cal.S.P.Col. A.& W.I., 1681-1685, nos. 40, 65, 67, 75, 77, 1249 i, 2081.

of Jamaica, for, although prize ships were not made free by statute until 1696, they had always been held to be "free ships" within the tropics by the colonial admiralty courts. The master of the "Swallow" considered pleading that the Mosquito Coast was not British but he was warned that were he to do so worse charges might be brought against him. When Talbot petitioned against the acquittal the Commissioners of Customs warned the Lords of Trade that the reversal of the judgement might jeopardise the very valuable logwood trade. As a matter of policy therefore the practice of considering prizes as free bottoms was confirmed.

Cases of interloping also raised international questions. In 1677 Governor Lord Vaughan learnt that a privateer, the "Sun", commanded by a Scotsman named Brown and manned by a mixed crew of English, French and Dutch, had landed 150 negroes in the island, contrary to the charter of the Royal African Company, and had immediately set sail. Lord Vaughan had some of the crew, who had remained in the island, questioned and managed to seize about 100 of the negroes. These he had condemned in the admiralty as

- 1) Cal.S.P.Col. A.& W.I., 1685-1688, nos. 900, 965, 1066, 1212, 1238, 1580.

pirates' goods and subsequently wrote to the Dutch governor at Curaçoa to notify him of the sentence. He then learnt that the "Sun" had been taken by Brown off the coast of Carthage and that the negroes belonged to Governor Douncker and two other colonists of Curaçoa. The Dutch owners appointed Sir Thomas Modyford to act as their agent in Jamaica for recovering the value of the negroes, and induced the Commissary of the United Provinces to approach the British government in the matter. The Commissary was successful and the Lords of Trade sent orders to Jamaica that the proceeds of the sale were to be paid over to the Dutch West India Company, for whom presumably the owners were acting. Everyone except the admiral and his judge must have been pleased; Dounckers and the Company got the money, the planters got the slaves, and only the admiral and the admiralty judge lost by losing their share of the pirate goods.¹⁾

The ships that were taken in Jamaica for interloping were always laden with negroes, but often it was hard to secure a condemnation, for there was such a demand for

1) Cal.S.P.Col. A.& W.I. 1677-1680, nos. 243, 364, 372, 867, 888, 902.

slave labour that public opinion supported the interlopers. When the "St. George" was seized in 1676 for importing negroes illegally, the judge of the admiralty allowed the case to be dismissed to the common law courts on the grounds that the seizure had taken place within the body of a parish. Dr. Lloyd's opinion was taken on the facts of the case, and he reported to the Lords of Trade that the ship was certainly seized within the jurisdiction of the admiral. After considering this opinion the Lords of Trade wrote to Governor Lord Vaughan directing him to preserve the jurisdiction of the Lord Admiral with care.¹⁾

Such miscarriages of justice as have been extracted from the history of Nevis and Jamaica were the result of attempts to make profit from enforcing the Acts of Trade. This was but natural in colonies where admiralty courts were in existence and where captains in command of royal ships were on the look out for prize-money. In New England the situation was very different. There prosperity depended mainly on sea-borne commerce, with which the Acts of Trade threatened to interfere considerably. The con-

1) Cal.S.P.Col. A.& W.I., 1675-1676, nos. 863, 966, 972, 987, 989.

flict of imperial authority and the colonies did not end until 1685 when the New England settlements were grouped together as a Dominion under Sir Edmund Andros. The organisation of the new Dominion included an admiralty court with judge, registrar and marshal, under the control of Andros who received an admiral's patent.¹⁾ From 1680 until 1685 a bitter struggle raged in New England over the Acts of Trade, for the Boston merchants were determined to trade freely and Randolph, the customs-officer appointed by the crown, struggled in vain to enforce obedience to the detested statutes. Randolph was supposed to keep a register of shipping and to see that all ships had paid the customs due in full in England and had the necessary certificates. He was further supposed to prosecute all ships which had not complied with the law and were found trading illegally. This, however, it was beyond his wit to compass without the help of an admiralty court, for all admiralty cases were heard by the general court of the court of assistants, and these courts naturally followed public opinion. Randolph's letters to England are there-

1) Cal.S.P.Col. A.& W.I., 1685-1688, nos. 468-470, 711.

fore full of complaints against the Massachusetts courts, and the need of an admiralty court was pressed on the Lords of Trade.

In New Hampshire Randolph met with some support from Governor Cranfield, who had received an admiral's patent in 1682.¹⁾ Cranfield's support, however, was ineffectual because his patent was limited in extent and he begged in vain to have it extended to include the whole coast from Kennebec in Maine to Fairfield in Connecticut.²⁾ He also found that the faction which was supporting Mason in his attempt to secure his rights, was not willing to help in securing obedience to the laws. When Cranfield appointed Chamberlain judge of the admiralty, Chamberlain, who was one of the leaders of Mason's party, refused to act.³⁾ His refusal, Cranfield thought, would make it impossible to enforce the Acts of Trade, and certainly he and Randolph had much trouble with the merchants of New Hampshire. Many of these were Scotsmen, and Cranfield was obliged to write for the Attorney-General's opinion as to whether

1) Cal.S.P.Col. A.& W.I. 1681-1685, no. 420.

2) Ibid., no. 885.

3) Ibid., no. 824.

Seotsmen could legally trade under the statute of 12 Car.II. Cranfield held, as was generally held, that they could not, but the Scots declared they were born within the king's¹⁾ allegiance, and imported goods direct from Scotland. With Boston so near and so recalcitrant it was impossible to suppress illegal trading, and it was not until the appointment in 1685 of Governor Dudley as admiral of New Hampshire²⁾ that reports of breaches of the Acts of Trade ceased.

Randolph began his complaints in the Spring of 1680 by declaring that an admiralty court was needed to deal with prizes brought in by privateers from the West Indies,³⁾ but the need of a prize court soon faded from his mind. A few months later he wrote of the acquittal of the "Expectation" of Cork, seized for illegal trading, by a jury of merchants and captains. The sentence was followed by an action for damages brought by the master against Randolph. While he was expecting to be thrown into prison Randolph heard that the servant, whom he had set over the goods taken from the "Expectation", had been beaten, and the goods removed from the warehouse. Nor was Randolph

1) Ibid., no. 885.

2) Ibid., 1685-1686, no. 457.

3) Cal.S.P.Col. A.& W.I., 1677-1680, no. 1305.

more fortunate in his attempt in June to seize the "James" of Londonderry, illegally laden with tobacco, for the master threatened to knock Randolph on the head if he went on board.¹⁾

After these two cases the opposition to Randolph became much stronger, and when in September 1680, he brought two sloops before the Court of Assistants for importing tobacco illegally, the jury found for the defendant and granted costs. Randolph wrote to the Lords of Trade for advice. He wanted to know if, upon appeal to the King in Council, a new trial could be ordered in the colony; he wanted to know how to deal with juries which gave verdicts against the evidence and the law; he wanted to know if the king's officers could be forced to pay costs, and if the governor of Boston had any right to fines and forfeitures paid on breaches of the Acts of Trade. The Attorney-General decided that no appeal lay, and that a new trial could only be awarded if a miscarriage of justice could be shown. He decided, however, that costs could not be given against the king and that Randolph could appeal against the order. In the matter of fines and forfeitures, he declared

1) Ibid., nos. 1374, 1383.

that the Company of Massachusetts Bay had no rights, and that half of both belonged to the king and half to the informer.¹⁾ Having failed in this attack the Bostoners changed their tactics and led by Danforth carried the appointment of a naval officer in the General Court, and made it law that all vessels should clear with him instead of with Randolph. The result was confusion. When Randolph tried to search suspected ships Russell, the rival officer, gave them entry, and Randolph was powerless. In June 1682 Randolph brought three cases to trial at Boston but the juries refused to convict.²⁾ The courts began, moreover, to demand securities from Randolph and to charge heavily for special courts to hear his cases. In one such case when Randolph refused to pay for a special court, he found himself liable for £800 demurrage in an action brought by a ship's master.³⁾

Finally matters became still worse. His searchers were indicted for piracy, and when the patent empowering

1) Cal.S.F.Col. A.& W.I., 1677-1680, nos. 1494; Ibid. 1681-1685, no. 122.

2) Ibid., no. 580.

3) Ibid., no. 749.

him to appoint deputies was produced the court disallowed it, and granted damages against the searchers. The situation was clearly impossible. So long as the Acts of Trade were not recognised in Massachusetts it was hopeless for Randolph to try to get offenders convicted in the ordinary courts. He gave up the attempt, at any rate, for a time, and brought his career at Boston to a close by writing to the Lords of Trade that £940 was due to the king on ships that had been seized by him and had been arbitrarily freed.^D Then he went to New Hampshire.¹⁾

There Randolph had but little better success. He found a Scottish vessel trading illegally, and induced the Governor to arrest her, but by the collusion of the officials the ship passed the fort and escaped. When the trial came on the jury gave a verdict against the king with costs, and all that the Governor could do was to dismiss the ring-leader from the council, and send out a circular letter to the governors of the West Indies asking them to arrest the ship, wherever found. Randolph was allowed to prosecute the jury, but he obviously did not think that it would be

1) Cal.S.P.Col. A.& W.I., 1681-1685, nos. 645, 798.

possible to enforce the Acts of Trade in New Hampshire so long as Boston went unpunished.¹⁾

For three years more Boston went unchecked though Randolph did his best to bring the enormities of the city before the Lords of Trade. In June 1683 he sent in two draughts of articles against the Company and Governor of Massachusetts Bay. In these he summed up the course of obstruction which had been pursued for three years by the merchants and government. To the charges already brought of forcing him to pay for special courts, of giving costs against the king and of appointing their own naval officer, Randolph now added that an admiralty court had been set up without authority from the Lord High Admiral. Unfortunately he gives no details concerning this court, and merely says that its existence was an invasion of the Duke of York's rights.²⁾ James must have heard of this, and he probably resented it; at any rate he was obviously in touch with colonial admiralty since a certain amount of business was transacted through his secretary, Sir John Werden. Thus he may well have been responsible for the organisation.

1) Ibid., no. 870.

2) Cal.S.P.Col. A.& W.I., 1681-1685, nos. 1101, 1121.

of a vice-admiralty of New England under Andros, for the Dominion of New England was one of the first colonial achievements of his reign.

For the three years of James II's reign the vice-admiralty of New England must have been on the whole successful in enforcing the Acts of Trade for there is no further trace of organised opposition such as Randolph had experienced earlier. The Dominion, however, did not survive the Revolution, and when the news of the fall of James II arrived, Andros and Randolph were thrown into prison for some months. But though the Dominion came to an end, the admiralty persisted in Massachusetts, for Governor Sir William Phips received a patent of ^{vice-}admiral in 1691.¹⁾ This patent was the result of the new charter for Massachusetts which laid down that the admiralty rights were to be vested in the governor by commission from the Lord High Admiral. The patents issued in 1691 did not give the admiral the right to appoint a judge, registrar or marshal for the admiralty court, a restriction which Phips petitioned to have removed in 1693. He obtained no extension of his powers and his

²
1) Ad. 1045, Out-letters relating to Admiralty and Vice-Admiralty, p. 128.

failure involved him in great difficulties, for when admiralty cases were brought before him, he had either to sit himself as judge or to exceed his patent and appoint a deputy.¹⁾

Phips seems to have been a capable but hot-tempered man, who treated his subordinates on occasion as if they were disobedient sailors and he were still on his quarter-deck. Moreover Phips had had little or no education; his enemies said he could neither read nor write when he became governor of Massachusetts Bay.²⁾ Certainly he could have had little knowledge of law, unless in his sea-fering days he had been involved in litigation. He must have known of the Admiral's droits of wreck for it was Phips who found the treasure-galleon off Hispaniola, and every colonial governor was circularised about securing the admiral's rights to treasure found there, but probably Phips knew little of other droits. Unfortunately the governor over-rode the collector of customs at Boston, Jahleel Brenton by name, and raised much trouble for himself. Brenton complained

1) Cal.S.P.Col. A.& W.I., 1689-1692, no. 1631; Ibid., 1693-1696, no. 177.

2) Ibid., no. 1467.

at length, in 1694, of the impossibility of enforcing the Acts of Trade because Phips released ships that had been seized for breaches of the Acts of Trade, and helped the masters in every way to circumvent the customs. Brenton further accused Phips of having purchased a share in a French vessel brought in by a privateer, of having sat as Judge of the Admiralty to condemn her and so make her a free ship, and of having used his position to enhance the price of the ship to increase his profit. This was not the only prize that Brenton said Phips had converted to his own use, for the Governor was charged with condemning and annexing a vessel taken by a Captain Short and with neglecting to secure the king's share in prizes worth £10,000.¹⁾ Phips also used his admiralty powers arbitrarily in New Hampshire, for Lieutenant-governor Usher wrote in 1693, complaining that Phips had flown his vice-admiral's flag outside his jurisdiction, had boarded a ship without a warrant, broken open a cabin and removed a chest and a trunk. To justify all this Phips claimed that his patent included New Hampshire. The complaints against Phips culminated,

1) Col.S.P.Col, A. & W.I., 1693-1696, nos. 826, 838, 1507.

however, in Brenton's account of how the governor laid violent hands on him on the quay and beat him severely. This the Lords of Trade might have felt but little, but, when Brenton added this to his statement that Phips had permitted an act exempting all ships engaged in inter-colonial trade from entering and clearing with the customs, the imperial government must have realised that there was no satisfactory machinery in the colonies for enforcing the Acts of Trade.¹⁾

In the West Indies there had been notable miscarriages of justice due mostly to the cupidity and excessive zeal of naval captains; there had been cases when ships should have been condemned, but had escaped through the connivance of the public. In New England, however, the admiralty had completely failed to enforce the Acts of Trade, the customs officers had been systematically thwarted, and Phips had abused his admiralty powers. If the Acts of Trade were to become effective a machinery had to be set up which would be under control from home, and which would be really independent of colonial government and opinion.

1) Cal.S.P.Col. A.&W.I. 1693-1696, nos. 258, 689.

The admiralty courts which had grown up in various parts of the empire were not co-ordinated and their practices and effectiveness varied too much from place to place. So it was that the statute of 1696, which consolidated the former Acts of Trade, was followed by the re-organization and extension of the colonial admiralty system. That system and the relations of the colonial admiralty with the English administration belongs to the next chapter. Its genesis is to be found in the Acts of Trade and the economic system which they embodied.

CHAPTER X

THE COLONIAL ADMIRALTY AND ENGLISH ADMINISTRATION.

The reigns of Charles II and his brother had seen the development of the colonial admiralty system, but when James II fled to France the system was not yet complete, for in many parts of the Empire the admiralty courts were unable to enforce their decisions or even to function at all in the face of public opinion. The wars which followed on the accession of William and Mary made an admiralty system of great importance because of the need for prize courts, but even more pressing than the need for prize courts was the need of the government for an instrument to enforce the Acts of Trade. The reports sent by Randolph to the Lords of Trade in 1696 show that it was not only New England that ignored the Acts of Trade, but that, throughout his time of service as Surveyor-general in America, he had been equally unable to secure convictions in Pennsylvania, Maryland and Virginia.¹⁾ In Maryland, Randolph declared,

1) Cal.S.P.Col. A & W.I., 1696-1697, no. 120.

that the attorney-general, one George Plater, had connived at illegal trade in tobacco with Scotland; in Pennsylvania the attorney-general, David Lloyd, had refused to let him prosecute several ships; in Virginia he found the attorney-general totally ignorant of the laws of England.¹⁾ It was moreover not to be expected that the Acts of Trade would be observed in the proprietary colonies, for the proprietors had neither fulfilled their obligations to see that the governors were duly sworn to keep the Acts of Trade, nor had they appointed the proper officials to execute the Acts.²⁾ It was obvious that if the Acts of Trade were ever to be effective the system must be made more efficient and machinery be provided to enforce it. In 1696 came the act which codified preceding Acts of Trade and filled in the gaps. This statute stated "that all Penalties and Forfeitures before mentioned... are to be recovered in any of His Majesty's Courts at Westminster, or in the Kingdom of Ireland, or in the Court of Admiralty held in His Majesty's Plantations respectively where such Offence shall be committed, at the Pleasure of the Officer or Informer, or in any other Plantation belonging to any Subject of England."³⁾

1) Cal.S.P.Col. A.& W.I., 1696-1697, no.165. Spelt Koid in calendar.

2) Ibid., no. 396.

3) 7 & 8 Gul III c.22. sect.6.

This section tacitly assumed the existence of an Admiralty court in every colony, but permanent admiralty courts did not exist in many parts of the Empire, and the Council of Trade had to supply the deficiency. A suggestion was made by Governor Nicholson of Maryland that exchequer courts should be erected to try all breaches of the Acts of Trade, but since the statute of 1696 expressly mentioned admiralty courts, which had for years tried these cases, the Council of Trade dismissed his project,¹⁾ and wrote to Nicholson that the design for colonial admiralty courts was being pursued. This design originated in a recommendation from the Customs Department that admiralty courts should be erected in every colony.²⁾ Randolph, who was once more in England, had long been urging that a judge, registrar and marshal of the admiralty should be appointed where necessary in the colonies; in addition Randolph wanted these courts to have an attorney-general¹⁷ who seems to have been expected to act as king's advocate in the admiralty, for Randolph does not mention the office of king's advocate anywhere, and the offices were customarily held by the same

1) Cal.S.P.Col. W.& W.I., 1696-1697, nos. 658, 1178.

2) Ibid., no. 107.

man in Jamaica. Randolph went so far as to submit to the Council of Trade three lists of names of men who were suitable to fill these posts.¹⁾ Two of these lists were drawn up in the summer of 1696, the third six months later. The first two lists contain suggestions for the offices of judge, marshal, registrar and advocate-general in the mainland colonies, but the third list does not mention the office of advocate-general since these appointments had been made in the meantime.²⁾ Otherwise the three lists are very similar. Randolph did not think that each colony required an admiralty court, but tried instead to work out a scheme for grouping the mainland colonies together so that every important commercial centre would be brought under the jurisdiction of an accessible vice-admiralty court. In 1696 he proposed to make one group of Virginia and North Carolina, a second of Pennsylvania and West Jersey, and a third of New York, East Jersey and Connecticut; the other mainland colonies were each to have an admiralty court, but Rhode Island, Massachusetts and New Hampshire were to share Thomas Newton for attorney-general, and Virginia, North

1) Ibid., nos. 120, iii-v, 759.

2) Ibid., no. 198. Edward Chilton was appointed to Virginia, Maryland, Pennsylvania, and ^{N. Carolina} W. Jersey, Thomas Newton to Massachusetts, Rhode Island and New Hampshire, and Thomas Graham to New York, East Jersey and Connecticut.

Carolina, Maryland, Pennsylvania and West Jersey were to share Edward Chilton for the same office.¹⁾ Presumably Randolph expected other lawyers to appear for the king in the admiralty courts besides the attorney-general. The list drawn up in 1697 grouped the colonies in the same way, except that New Hampshire was joined to Massachusetts. There is nothing to show why Randolph in his third list modified his plan in this way, nor why he made some alterations in the names he suggested. These differences were, however, only slight and his plans were adopted in the main by the Council of Trade. In April 1697 commissions were issued to officers for admiralty courts in Rhode Island, the Bahamas, S. Carolina, Pennsylvania, the Lower Counties and West Jersey, these last three districts being grouped together.²⁾ The admiralty system was thus completed, for those mainland colonies, which had previously been without courts, were now brought into line with the West Indies and the other settlements which were already part of the colonial admiralty.

William III's reign saw not only the completion of the system but also certain modifications in the methods of

1) Cal.S.P.Col. A. & W.I., 1696-1697, nos. 120 iii-v. In one list New York is separated from East Jersey and Connecticut.

2) H.C.A.Misc. 823. For names of officers see Appendix.

appointment. During the reign of Charles II the administration of the colonial admiralty had been kept separate from that of England and Ireland. The administration of these last two admiralties had of course been connected before 1660, though Ireland to some extent was independent of England; for instance there was an High Court of Admiralty for Ireland which sat at Dublin and after 1670 regained its former importance and independence. Moreover the appointment of two admiralty marshals in 1660 shows that James was early paying attention to the Irish admiralty.¹⁾ The Irish vice-admirals, however, paid such sums as they collected into the High Court of Admiralty at London and entered their accounts there.²⁾ Their commissions too were entered down to 1673 in the books kept in the registry of the English High Court. In this year the Test Act was passed and the Duke of York was obliged to resign from the English Admiralty, but since the Act did not apply to Ireland or the Colonies he continued to be Admiral of Ireland and of the other dominions across the sea. As a result the Irish and colonial administrations were merged into one.

1) H.C.A. Muniment Book, vol. I.

2) See ante Chapter II.

Before 1673 James had followed the practice of earlier admirals, such as Buckingham, and had used the registry of the High Court of Admiralty at London as a patent office. When an English or Irish vice-admiral was to be appointed, the Lord Admiral sent a warrant to the judge of the admiralty court, ordering him to draw up the patent. This was copied verbatim into one of the volumes now known as the Muniment Books, and the warrant was filed separately.¹⁾ The patent was then sealed and issued on payment of the proper fees, which amounted early in the eighteenth century to about £9. 0. 0.²⁾ but where the sealing was done cannot be decided. The seal of the Lord Admiral may have been kept in the registry where the seal of the court was kept, but more probably it was in the charge of the Lord Admiral's secretary, for colonial admirals' patents were not issued by the High Court of Admiralty but by officials who acted directly under the Lord Admiral, and it is more likely that the duty of sealing all patents was entrusted to them. These officials were most probably drawn from the household of the

1) Files of Warrants have survived from the first half of the 17th century, but there are no Muniment Books of this period.

2) Ms. volume in Admiralty Library.

Duke of York, since his secretary Sir John Werden on occasion corresponded on matters connected with the admiralty powers of the Governor of New York, and a marginal note to the entry of one colonial patent refers to "the great book of the household."¹⁾ Moreover the entries are variously dated from St. James, Whitehall, Windsor, Oxford and Edinburgh showing that the officials accompanied the Duke of York wherever he went on business. Throughout the period 1660-1685 all patents to colonial admirals and admiralty officials were entered in a series of volumes referred to by those who kept them as the Warrant Books. The volumes, however, are not warrant books of an ordinary type, for the entries are summaries of the patents issued and copies or notes of letters written on admiralty business. Warrants would have been addressed to some official but none of the entries of colonial patents are addressed to anyone but the man appointed.²⁾ This makes it certain that all colonial patents were sealed by the Lord Admiral's officials and not by the admiralty judge's, and makes it

- 1) Ad ² 1755 f. 33 v. Warrant for George Pygott and Charles Stuart to be Marshals of the Admiralty of Ireland.
- 2) For example of an entry see Appendix.

practically certain that between 1660 and 1673 the Lord Admiral's seal was not kept at the registry of the High Court of Admiralty.

After 1673 a new procedure for appointing Irish vice-admirals was adopted; the same people who issued the colonial admiralty patents drafted the patents for Irish vice-admirals, entered them in the same volumes, and sent the drafts to the High Court of Admiralty at Dublin, which issued them. The accession of James II, as might be expected, brought further changes, and after 1685 Irish vice-admiralty patents were once more issued from the registry of the London court. The administration of the colonial admiralty is, however, obscure during James's reign, for the volume which should contain the entries of patents issued between 1685 and 1689 is missing from the Public Record Office; nor is it to be traced among the Pepys Mss. at either Cambridge or Oxford, though Pepys seems to be the most likely person to have removed it. The lists of letters relating to the admiralty in the Pepys Library at Magdalen College contain letters on matters connected with

Irish vice-admiralty, but there are none listed as referring to the colonial vice-admiralty. A manuscript in the Admiralty Library, however, proves that patents in Latin were issued to both the two colonial admirals appointed during the reign of James II, but the reference says nothing of the procedure by which they were issued.¹⁾ Presumably the old system was continued. With the departure of James II the office of Lord Admiral was put into commission and the three admiralties came under one administration. From 1691, the date of the first colonial appointment of the new reign, all colonial admiralty patents were issued by the High Court of Admiralty in exactly the same way as the English and Irish patents. This procedure was followed during the eighteenth century.

Not only the methods of issuing patents changed from time but also the content of the patents. The Irish vice-admirals were on exactly the same footing as the English, but the powers of the colonial admirals were considerably wider; indeed the jurisdiction of the colonial admiralty courts had come to be wider than that of the High Court of Admiralty itself.²⁾ It is impossible to say what

1) Ms. vol. in Admiralty Library p.8. Joseph Dudley's patent for New England, 1685, and Sir Edmund Andros's patent for New England, 1688, both in Latin as was customary.

2) Ibid., pp. 13, 60.

the first colonial patents contained since the records containing notes of their content are lost, but they were certainly wider in scope than the English patents. Mason had made a point of asking for extraordinary powers, and Lord Windsor as Admiral of the American Seas certainly had far greater power than any English admiral of the coast. Windsor could and did issue letters of marque and reprisal; his court heard prize cases which no English vice-admiralty could try. Besides his general patent as admiral Windsor must also have had a commission empowering him to appoint the officials of the admiralty court, for the commission for Tangiers issued to John Fitzgerald in June 1664 is accompanied by such a commission and the vice-admiralty patent is said to be on the pattern of those granted to the Earl of Teviot and Lord Windsor.¹⁾ Windsor must, further, have had a commission giving him authority over the royal ships stationed at Jamaica, and it became customary for such commissions to be issued to vice-admirals when their other patents were issued.²⁾ Belayse had such authority

²
1) Ad 1755, Out letters relating to admiralty and vice-admiralty, f. 7.

2) Ibid., ff. 36 v, 37, 37 v, 38 v, 41.

at Tangiers though Fitzgerald did not.¹⁾ The appointment of William, Lord Willoughby, to the vice-admiralty of Barbadoes is the last on this pattern. In 1667 a commission was issued by the Lord Admiral, not by the admiral of Tangiers, appointing William Johnson D.C.L. to the office of judge of the admiralty of Tangiers.²⁾ The note of his patent says that it is in the same form as that issued for Barbadoes to Samuel Berwicke, possibly that same Berwicke or Barrett who had been made admiral instead of Francis, Lord Willoughby. Barwicke's patent must have been entered in the missing volume, but it is probable that both his and Johnson's patents were on similar lines to that granted to Richard Lister, who was made judge of the admiralty from Sallee to the Cape of Good Hope, that is within the jurisdiction of the African Company; Lister's patent follows the general lines of English patents.³⁾ Although colonial admirals continued on occasion to appoint the officers of their courts, no further entries are made of commissions empowering them to do so, and the Lord Admiral continued to appoint judges, marshals and registrars to colonial courts.

1) Ibid., f. 8 v.

2) Ad. 1755, Out letters relating to Admiralty and Vice-Admiralty, ff. 17 v, 18 v.

3) Ad. 1755, Out letters relating to Admiralty and Vice-Admiralty, ff. 2 v- 4, 28 v.

In 1676 commissions were issued for the registrar and Marshal, and two years later for the judge, of Tangiers; in February 167⁷~~8~~ James also issued a commission continuing Sir Thomas Lynch in the office of admiralty marshal for Jamaica, and empowering him to act by deputy.¹⁾

After 1691 the form of the patents changes again and for some years the commissioners of the admiralty apparently experimented. They began by expressly reserving the right to appoint the judge, marshal and registrar of the court, and used this form in the commissions to Sir William Phipps^p, Sir Edmund Andros and Samuel Allen, which were all issued in 1691.²⁾

The following year a new clause was inserted and Beeston and Richeir in their respective patents for Jamaica and Bermuda were each given "power to Ordaine, and appoint his Deputies and under-officers, and with provide that just account be made every yeare, and in default the letters Patents to cease and determine." ³⁾ Similar warrants were also issued for patents for Governors Russell,

1) Ibid., f. 34, 36, 36v.

2) Ad. 1045, Out Letters relating to Admiralty and Vice Admiralty pp. 128, 145, 146, 147.

3) Ad. 1045, Out Letters relating to Admiralty and Vice Admiralty, p. 228.

Nicholson and Condington. New patents were not, however, issued to those who had received the more restricted ones granted in 1691, for in 1696 a warrant was issued for Charles Storey to be judge of the admiralty of New Hampshire on the request of Samuel Allen, the governor and admiral of that province, and when the scheme of admiralty courts had passed the Council of Trade the admiralty commissioners appointed many of the officers of the new courts.¹⁾ This method of appointment was open to grave objections. The time taken in sending news to England from the plantations and in getting replies might easily lead to a suspension of justice if an admiralty judge died and his place could not be filled on the spot. A suspension of the working of the admiralty court might also result in weakening the authority of the court, and in allowing smuggling and interloping to escape punishment. To prevent a failure of justice the Commissioners of the admiralty issued in May 1697 a warrant for patents to be drawn for the governors of Virginia, Maryland, New York, Massachusetts Bay and the Bermudas, em-

1) H.C.A. Misc. 823.

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powering them to fill vacancies caused by death in the offices of judge, registrar, marshal and advocate not only within their own colonies but also within neighbouring colonies which were allotted to them. Under this scheme the governor of Virginia was to make all necessary appointments in Carolina and the Bahamas, the governor of Maryland in Pennsylvania and West Jersey, the governor of New York in Connecticut and East Jersey, and the governor of Massachusetts in Rhode Island and New Hampshire; Bermuda was of course left alone.¹⁾ Provision had already been made in the other colonies, partly by allowing the admiral to act as judge in the event of a vacancy, and partly by issuing patents which arranged that the admiralty power on the death of a governor and admiral should devolve "on such person or persons as by his Majesty's Commission shall succeed....."²⁾

The type of commission issued in 1692 is perhaps one of the most interesting for it is the only one which requires a colonial admiral to submit accounts. The

1) H.C.A. Misc. 823, No. 352.

2) Ms. volume in Adm. Lib.; H.C.A. Misc. 823.

English and Irish admirals were always supposed to render account and pay over twice a year, the sums collected on droits and fines, but owing to the scantiness of the surviving records it is hard to say how regularly they did so in the period 1660-1697. If the accounts preserved in the Public Record Office are all that were ever rendered, English and Irish admirals did not trouble themselves much over accounting. The colonial admirals however do not seem to have been required to render account ¹⁾ or to pay over the proceeds of droits and fines except in certain cases. The Lord Admiral's share of prizes was set aside carefully at Jamaica between 1662 and 1664, but the history of the sums thus accumulated is obscure. The separation of the colonial and English administrations meant that colonial admirals would neither pay over sums nor render account to the High Court of Admiralty as was the English custom. Probably the colonial profits were paid over directly to the officials who managed the colonial admiralty for James, and the records of these payments have disappeared with the records of the household of the Duke of York. Twice during the reign of James II the Council of Trade received

1) Ms. volume in Adm. Lib.

accounts of pirates goods which had been condemned at Jamaica.¹⁾

The accounts submitted in October, 1683, show that goods to the net value of £1197.11. 1 had been taken, and that £113..16..4 had been spent on fees in condemning them.²⁾

The registrar who sent in the accounts did not say if the sum had been paid over nor where payment should have been made. He simply stated that this was all that had been collected during Sir Thomas Lynch's time in office.

Wreck was of course the other great admiralty droit after prize, but it was only at one period that the Lord Admiral seems to have been able to secure his due share. In the early years of the Bermuda colony wrecking had been commonly indulged in, and Warwick had protested in vain that the colonists were ignoring his rights. Bermuda, however, was not the only island given to wrecking, for Lynch spoke of New Providence as intent on pillaging Spanish wrecks, presumably some of those which lay on the Bahama

1) C.O. 1/54, no. 20; Cal.S.P.Col. A.& W.1., 1685-1688, no. 898 (the reference given here to the original is incorrect, and it has been impossible to trace the document).

2) C.O. 1/54, no. 20. See Appendix for the document.

reefs. The greatest Spanish wreck, however, was that found near Hispaniola and salvaged largely by an expedition financed by the Duke of Albermarle and others under the command of William Phips, afterwards admiral of Massachusetts. The value of the treasure recovered was enormous and created a tremendous stir, for it was well known that the first expedition only recovered a part of what could be saved. Immediately many small ships made their way to Hispaniola, hoping to secure something, and the government at home had to take steps to guard against loss, the king, and others who had adventured money in the expedition to salvage the treasure. Bermuda and Jamaica were the centres from which these small ships went out but it was not certain, of course, that the ships would return to their original port so a circular letter was issued in October 1687, notifying the governors of Jamaica, Barbados, the Leeward Islands, New York, New England, Virginia and Carolina that a full half of all the treasure recovered from wrecks was to be secured for the king.¹⁾ As both king and Lord Admiral, James II was in a strong position, and, being short of money, he used it to increase to Admiral's right to wreck from a

1) Cal.S.P.Col. A.& W.I., 1685-1688, no. 1470.

tenth to one half. The governor of Bermuda had already been warned to save a moiety from the Hispaniola wreck, and had been ordered to assist Henry Hordeswell, the newly-appointed chief justice, to collect it and transmit it in H.M.S. Swan. This may have been the £988 which is mentioned in an undated account of the bullion and coined money taken from a wreck at Ambrosia,¹⁾ but since the total value is given as £10,782 it is more likely that the arrival of only £988 called forth the circular letters mentioned above.²⁾ Before the order reached Jamaica the ships fishing at the wreck for treasure were called in, because the new governor, the Duke of Albemarle, had received the sole right to salvage from that particular ship, but the Jamaican authorities were only prepared to levy a tenth of what had been already salvaged; this was entered in December 1687 in the the Naval Office in Jamaica as amounting since Albemarle had arrived to 5,995 dollars.³⁾ In the February following Col. Molesworth, the deputy-governor, was writing

1) I am indebted to Mr. G. H. Kimble for identifying Ambrosia with Alreños, a reef off Hispaniola.

Cal. S. P. Col. A. & W. I. 1665-1688
2) Ibid., nos. 1469, 1474, 1587.

3) Cal. S. P. Col. A. & W. I., 1685-1688, nos. 1522, 1577. Albemarle was one of the original adventurers in the salvage expedition.

anxiously to the Lords of the Treasury about the king's droits, for he was afraid that his bond would not be forgiven him for collecting only a tenth instead of half the proceeds of the wreck; since he had been obliged to give recognizance in £20,000, he might well be anxious. His defence was that he and the Council had followed precedents laid down by their lawyers and law books, and that the king himself had taken only a tenth from Sir William Phips^f, as Phips had done in the case of a Bermudan whom he found salving treasure.¹⁾ The tenths collected by Molesworth were stated to amount to £5000, but more, Albemarle thought, could be found by searching.²⁾ Hordeswell also reported from Bermuda that treasure had been concealed, but in spite of opposition he collected thirteen pounds weight of treasure and commuted a debt of 1000 pieces of eight buried in the Bahamas for 415 pieces of eight. He was less fortunate in dealing with one Samuel Harvey who had given the governor thirty-four pounds of silver out of five hundred; Hordeswell extracted the king's tenths from Harvey but could only hope to get more, since he was an illand

1) Ibid., no. 1649.

2) Ibid., no. 1656.

refractory person.¹⁾ The right to dispose of wreck seems to have been kept pretty strictly in the hands of the Lord Admiral or of the commissioners who exercised that office, for in 1690 the commissioners wrote to Sir Charles Hedges, the judge of the High Court of Admiralty, requiring him to grant a commission to a group of adventurers who wished to recover a wreck "within 70 leagues of Jamaica."²⁾ It would have seemed more natural to apply to the admiral of Jamaica for permission to salvage a wreck in those waters, but possibly 70 leagues was too remote to be within his jurisdiction.

The only droit mentioned besides prize and wreck is that due on royal fish. The most important royal fish is, of course, the whale, so that question of this droit could only come up in the more northerly colonies; Bermuda was the most southerly colony where whales were common. Neither the king nor the Lord Admiral ever made any profit on royal fish in the colonies, for the few whales that came on shore were plundered by the people who lived near by long before the vice-admiral could claim the carcass and

1) Cal.S.P.Col. A.& W.I., 1685-1688, no. 1899.

2) ²
Ad 1045, pp. 62, 63.

sell it for whale-bone and train-oil. In New York the whalers either claimed that they had killed the whale or the Indians claimed it as theirs by right, for they held that all jetsom was theirs.¹⁾ In Bermuda, Governor Cony acknowledged he was helpless because the people supported each other against the crown. He declared in June 1685 that some fourteen whales had been killed that year, a large whale being worth about £80 all expenses paid, but not one penny had been taken for the droits, not could it be collected.²⁾

The general conclusion must be then that the colonial admiralty was no great source of profit. Either the profits seem to have been retained in the colonies or to have been transmitted to the Lord Admiral only to a very small extent. It may have been the difficulty of getting accounts from the colonial admirals that led the admiralty to cease from demanding them, for Spelman declared that the vice-admiral of a colony differed from the vice-admiral of a county only in that he could appoint the judge, marshal and registrar and need only render account when

1) Documents relating to New York, vol.III, pp. 306, 307, 311.

2) Cal.S.P.Col. A.& W.I., 1685-1688, no. 210.

asked to do so.¹⁾

The fines inflicted in the admiralty courts do not seem to have been much more profitable than droits. In the case of ships condemned and sold for breach of the Acts of Trade two thirds of the proceeds went to the informer and governor of the colony so that there was only a small share left for the Lord Admiral. Indeed the fees for the judge and other officials had also to come out of these profits, and yet by all accounts the court seems to have been inadequately paid. In two of the three piracy cases, mentioned above, the judge's fees were £12.12. 6 and in the third £9; this difference seems to have been due to the comparative smallness of the sum at stake in the third case, for while the first two cases involved sums over £500, the third only involved a sum of nearly £175. The other fees varied in the same way but it is worth noting that the marshal's fees were the heaviest in all three cases, heavier even than the judge's.²⁾ The advocate seems to have been paid by the case, for he received £6 each for the two bigger cases and £3 for the smaller, but the registrar like

1) Ms. Volume in Adm. Lib. A colonial vice-admiral, of course, had wider powers than Spelman admitted.

2) C.O. 1, no. 20.
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the marshal was paid piecemeal for each job that he had to do, and his fees total up to odd pounds and shillings.

It is unfortunately impossible to tell from the scale of fees for the admiralty court in Jamaica how the fees of the various officials were made up; certain duties belonged to each official, for instance the marshal made arrest, the registrar received petitions and the judge gave sentence, but who took the fee for an adjournment it is impossible to say.¹⁾

Nor does the compiler of the Ms. volume in the Admiralty Library make it clear. Like the historian of Jamaica, Edward Long, he condemns the system of paying by fees, for he says of the officials of the colonial vice-admiralty courts that they "having no Salaries, consult nothing but their Fees, and prostitute the dignity of the courts for the sake of gain." He proposed that fixed salaries should be paid instead, and that the money for those salaries should be found in the "perquisites of admiralty", which were either neglected or converted by the governors to their own uses.²⁾

1) H.C.A. Vice-admiralty proceedings, 59. f.5, from the back.

2) Ms. volume in Adm. Lib.

The result of poor payment was of course to be seen in the type of men appointed to hold positions in the admiralty courts. Trained civilians were not likely to take posts in the colonies when remuneration was so uncertain, so that the admiralty courts came to be manned by men who were ignorant of the law they were to administer. When cases were tried by a council there was not so much chance of injustice being done, even if the councillors were not trained in law, but when an ignorant man, whose livelihood depended on his fees, was on the bench litigants were not likely to be satisfied with the decrees given. Trouble might also arise from disputes between the admiral and his judge. This had happened in Leinster in 1663, when the vice-admiral, Sir George Wentworth, quarrelled with Dr. Edward Cooke, the judge of the vice-admiralty court of Leinster, about their respective jurisdictions. Wentworth seems to have insisted in sitting on the bench with the judge and then differing from him on the sentence, with the result that no decision could be reached. The Lord Admiral therefore laid down a general ruling on the respective spheres of action of a

judge and vice-admiral. The vice-admiral was to take the presentations of the grand jury, to have the custody of wreck, felon's goods, fines, forfeitures, droits and perquisites in general; and to use the seal committed to his charge where necessary. The judge was to execute all manner of judiicial business, both arising at home and across the seas, even though power to do this last was not expressly mentioned in his patent. The judge also had power to fine and imprison.¹⁾ This ruling seems to have been generally adopted in course of time, and the right of the Lord Admiral to decide such disputes to have been recognised.

To carry out his duties the judge must also have had a seal for his court, though it is not mentioned in the letter to Wentworth. The admiral's seal was not used for judicial documents, and it became customary for every vice-admiralty court to have its own seal. An impression of the seal of the Admiralty Court of Jamaica exists in the Public Record Office, but it is so poor that the whole inscription cannot be made out; in the centre is a three-

1) Ad. 2, Out letters relating to Admiralty and Vice-
1755
Admiralty, ff. 1-2^{iv}; Ms. volume in Adm. Lib.

327.

masted ship with sails spread, and round the rim is an inscription of which the only legible words are "PATENT TELL OCEAN".¹⁾

Indeed without a seal neither vice-admiral nor judge could act so that the request from Bermuda in 1694 for an admiralty seal was somewhat urgent. Presumably a new one was needed because of the accession of William III, for the request was accompanied by the statement that besides an admiralty seal a new seal was needed for the island, and until it should come the old one was being used with the letters I.R. erased.²⁾

This division of work between the admiral and the judge came in course of time to apply in the plantations as well as in Ireland, and, as in the case of the Leinster dispute, any contest between an admiral and his judge was supposed to be settled by the Lord Admiral. Such disputes do not appear to have arisen often in the period 1660-1697, the complaints respecting Sir Henry Morgan being directed rather against his conduct towards pirates than against his encroaching on the admiral's jurisdiction.

1) C.O. 1, no. 21.

2) Cal.S.P.Col. A.& W.I., 1693-96, no. 798, xxxiii.

More serious were the complaints from the litigants who felt that they had not had justice from men who were ignorant of maritime law, were over-awed by the admiral, or were mainly concerned with lining their pockets with fees.

These complaints were so numerous that the Council of Trade and the Admiralty had to evolve a procedure for appeals. This was not finally settled in the seventeenth century, but it is possible to trace the lines of the final plan. To-day appeals in admiralty cases come straight from colonial courts to the Judicial Committee of the Privy Council, just as any other kind of appeals may come from the colonies. This procedure has come, unchanged by any of the Judicature Acts, directly from the eighteenth century practice. This practice was not, however, established without experiment and discussion. The question of the possibility of appeal from a colonial admiralty court has already been touched on in the case of the "O'Brien".¹⁾ As Exton declared in his report on that case, there was no regular channel of appeal from a colonial court. In Ireland it was a different matter.

1) See ante Chap. IX.

Sir Leoline Jenkins wrote that "In Ireland it lies harder upon the subject to prosecute an Admiralty cause, than here (i.e. in England). If a man begins a Cause in the Vice -Admiralty Court at Connaught, an appeal lies to Dublin; from Dublin to the Court of Admiralty here; and from thence to His Majesty's Court of Delegates."¹⁾ The Irish admiralty was, of course, under the direction of the English admiralty, but the colonial admiralty was completely independent until 1691, when colonial patents were first issued by the High Court at London. The separate patent issued to James, Duke of York, for the colonies, was responsible for this. The result was that there was no appeal, as Exton declared in the case of the "O'Brien", from the colonial courts to the High Court at London, and even after 1691 the English court did not claim the right to hear appeals from the colonial courts.

The only way then of getting redress from the sentence of a colonial admiralty court was by petition to the king in Council. Such petitions were generally referred to the Council of Trade and Plantations, and there considered in

1) Opinion quoted in Ms. volume in Adm. Lib. See also Ad. 2, Out letters relating to Admiralty and Vice-
1755
Admiralty, f.14 v. for example of an appeal from Connaught

relation to legal opinions sent in by the law officers and the judge of the Admiralty. Such was the procedure followed in the case of the "O'Brien". Though the petition has not been preserved a similar procedure was apparently adopted in the case of the Guinea interloper condemned at Barbados in 1695, for the opinions of the attorney General and judge of the admiralty on this case declared that the appeal of the master, Richard Holder, might be admitted on the grounds that the admiralty court, which tried the ship, had been erected by Governor Russell without authority from the Lords of the Admiralty.¹⁾ Once the appeal had been admitted the crucial question arose as to where the second trial was to take place. The Council sometimes heard the case and gave sentence, as happened when Mingham petitioned against his sentence given in Jamaica.²⁾ This undoubtedly led to the modern practice of hearing colonial appeals before the Judicial Committee of the Privy Council, but in the seventeenth century it was not the only way of remedying a miscarriage of justice. In 1689 the Lords of Trade ordered

1) Cal.S.P.Col. A.& W.I., 1693-1696, nos. 1807, 1862.

2) See ante Chap. IX.

that the appeal of Captain Daniell, master of the "St. Jago de la Victoria" should be heard by the governor in council in Jamaica. The "St. Jago de la Victoria" was a ship employed by the Assiento, carrying negroes and passengers from Curacao to Port Velo. Owing to bad weather provisions ran short on the voyage and Captain Daniell touched at Jamaica to replenish stores. As she sailed away she was arrested by a frigate and brought back to be tried for breach of the Navigation Acts, a special court being erected for the purpose. Daniell demurred to the jurisdiction of this court and, after the condemnation of the ship, appealed to the king. The petition was referred to the Lords of Trade, who ordered the appeal to be heard by the governor in council, and further safe-guarded Daniell by permitting further liberty to appeal to the King in Council. This was not needed as Daniell won his case on the hearing in Jamaica.¹⁾

More often the second trial took place in England, and the appellants certainly preferred that it should. The quarrel of Sir Jonathan Atkins, Governor of Barbados, and his successor, Sir Richard Dutton, with Samuel Hanson

1) Cal.S.P.Col. A.& W.I., 1689-1692, nos. 50, 501, 258, 974.

illustrates this. The quarrel began over some guns that had lain for some time on a wharf at St. Michael's. Hanson bought these guns from one Burston, though they belonged to a Jew named Rodriguey, and removed them from the wharf. Since Rodriguey had imported the guns for the use of the government Atkins was very angry, and concluded that Hanson had conspired with Burston to get the guns cheaply. So far the quarrel did not concern the admiralty, and Hanson's trial for conspiracy was, of course, in the common law courts. The verdict was given against him, and a fine inflicted, which Hanson refused to pay. He appealed to England and began to spread tales against Sir Richard Dutton, who had succeeded Sir Jonathan Atkins. While this quarrel was still raging a ship belonging to Hanson was seized for interloping, condemned and sold by inch of candle for barely the upset price. Hanson petitioned the king against this sentence and in his petition asked that this and his two earlier appeals might be referred to the Court of Admiralty and the common Law courts.¹⁾ The Council of Trade does not seem to have granted this request

1) Cal.S.P.Col. A.& W.I. 1681-1685, nos. 469, 791, 797, 797 ii, 1040, 1040 i,

but to have dealt with the dispute itself, though the final result does not appear anywhere among the colonial papers.¹⁾

Though so many appeals came from the colonial admiralty courts to England, there was always a certain dislike in the colonies of any interference. The expense of defending an appealed case in England was heavy, and the delays consequent on an appeal were troublesome, so that convenience alone urged the colonists to try to restrain appeals. Besides this motive there was a distinct feeling that a colonial government was competent to determine disputes, and that the final court of appeal should be within the colony and not in England. As early as 1673 the Council of Jamaica stated this view; on the governor's proposing that it should decide whether appeals from the admiralty in Jamaica should go to the king or to the Court of Delegates in England, the council declared that there was no precedent for appeals from any of the dominions, and to allow such was subversive of the government.²⁾ This feeling became very strong in the eighteenth century, when such colonies as

1) Ibid., nos. 1409, 1435.

2) Cal.S.P.Col. A.& W.I. 1669-1674, no. 1150.

Pennsylvania struggled hard to get the Supreme Court of the colony recognised as the final court of appeal. When, however, the procedure of appealing in admiralty to the Privy Council became established, feeling ran high in the colonies. The Admiralty Courts tried all breaches of the Acts of Trade, which were so irksome and so detested, and the different attitudes of the colonists and the imperial government to these statutes made the colonists expect that appeals in such cases would not be considered from an impartial point of view.

The admiralty courts, which had been welcomed when privateering made them necessary, had come to be detested when their main work developed in connection with the Acts of Trade. The control of the admiralty courts by the imperial government was further contrary to colonial opinion, which held that the judicature of a colony should be under the control of the colonial government and not under the sway of Commissioners in England. Furthermore the difficulty of finding men with training in civil law to fill the posts in the colonial admiralty courts led to the colonists

despising and detesting their jurisdiction.¹⁾ Thus a judicial system, which was later to spread a knowledge of English maritime law and justice throughout the world, came in the eighteenth century to be hated as a weapon of a tyrannical government. More than a generation before the Declaration of Independence was drawn up, a writer declared of colonial admiralty jurisdiction that "The People have an aversion to those Courts as they derive their authority from the Crown, whereas the Provincial Judges are chosen amongst themselves; And they are generally contemned from the unfitness of the Persons who are Judges, they knowing little or nothing of the Civil or Maritime Laws; and having no Salaries, consult nothing but their Fees, and prostitute the dignity of the courts for the sake of gain."²⁾ Such were³⁾ the courts, which had once been so useful, which were still so necessary to a commercial empire, but which from their faults were to prove one of the causes of the disruption of that empire, and to be branded in the Declaration of Independence as exercising an "unwarrantable jurisdiction."³⁾

- 1) E.g. the prolonged quarrel of William Penn and Robert Quarry, admiralty judge of Pennsylvania and Maryland.
- 2) Ms. volume in Adm. Lib.
- 3) Thorpe, Federal and State Constitutions, vol.I, p.6.

APPENDIX I.

Vice-Admirals and Vice-Admiralty Officers in Ireland and the Colonies.

The dates given are those of the beginning of the process of appointment with the issue of the warrant. The date of the patent is given wherever it has been ascertained and differs from the date of the warrant. When neither warrant nor patent has been found, the date is the earliest at which the man is known to have been in office.

Bahamas

Ellis Lightwood	Judge	29 Apr. 1697 ¹
Thomas Waldoek	Registrar	29 Apr. 1697 ¹
Joseph Harwood	Marshal	29 Apr. 1697 ¹
John Leighton	Advocate	29 Apr. 1697 ¹

Barbados

Sir Jonathan Atkins	Vice-Admiral	24 July 1677 ²
— Jones	Registrar	3
Sir Richard Dutton	Vice-Admiral	24 Nov. 1680 ⁴
Hugh Archer	Judge	1683 ⁵
Edwyn Stede	Judge	1683 ⁶
Francis Russell	Vice-Admiral	5 Mar. 1693 ⁴⁷
Hon. James Coates	Judge	1695 ⁸
Hon. R. Grey	Vice-Admiral	19 Oct. 1697 ⁷

1. H.C.A. Misc. 823, Vice-Admiralty Warrants; H.C.A. Muniment Books, vol. IV, ff. 174, 177, 178, 179, patents dated 26 June 1697.
2. Ad. 2, Out letters relating to Admiralty and Vice-Admiralty, 1755 f. 34 v.
3. Cal. S.P. Col. A. & W.I., 1677-1680, no. 1362.
4. Ad. 2, f. 37.
5. Cal. S.P. Col. A. & W.I., 1681-1685, no. 1040 i.
6. Ibid., no. 1071.
7. H.C.A. Muniment Books, vol. IV.
8. ~~Board of Trade, Barbadoes 5, no. 102 i, C.O. 28/2, no. 102 i.~~

Leeward Islands

Sir William Stapleton	Vice-Admiral	26 July 1677 ¹
Sir James Russell & others	Judges (Nevis)	1 Apr. 1682 ²
Colonel William Burt & others	Judges (Nevis)	Mar. 1685 ²
Colonel Thomas Hill	Deputy Vice- Admiral (St. Kitts)	1685 ³
Christopher Codrington	Vice-Admiral	26 Jan. 1696/7 ⁴

Bermuda

Richard Cony	Vice-Admiral	1684 ⁵
Isaac Richeir	Vice-Admiral	23 Sept. 1692 ⁶
John Goddard	Vice-Admiral	17 Mar. 1692/3 ⁷
Samuel Day	Vice-Admiral	25 Feb. 1697/8 ⁸

Ireland

Colonel Marcus Trevor	Registrar	19 Dec. 1660 ⁹
Robert Smith)	Marshals and	
Richard Sturt)	Water-bailiffs	22 July 1661 ¹⁰
M. Louis Blancquefort de Duras	Registrar	7 Apr. 1670 ¹¹
William Glascocke	Judge	23 Aug. 1670 ¹²

1. Ad. 2, Out letters relating to Admiralty and Vice-Admiralty, f.34v.
1755
2. Col.Pap.LVII, no.51. These commissions were held to exist concurrently.
3. Cal.S.P.Col.A. & W.I., 1685-1696, no. 388.
4. H.C.A. Muniment Books, Vol. IV.
5. Memorials of Bermuda, vol. II, p.529. No warrant or commission from the Lord Admiral has been found.
6. Ad. 2, Out Letters relating to Admiralty and Vice-Admiralty, 1045 p.228; H.C.A.Misc. 823, Vice-Admiralty warrants; H.C.A. Muniment Books, Vol.IV, f.102. The patent entered here is dated 15 Oct. 1692/3.
7. H.C.A. Misc. 823; H.C.A. Muniment Books, vol.IV, f.106.
The patent entered here is dated 15 Mar. 1692/3.
8. H.C.A. Muniment Books, vol. IV, f.197.
9. H.C.A. Misc. 821, Vice-Admiralty Warrants.
10. H.C.A. Muniment Books, vol. I, f.190.
11. Ad. 2, Out letters relating to Admiralty and Vice-Admiralty, 1755 f.26; this appointment was repeated on 22 Aug.1670, *ibid.*, f.26 v.
12. *Ibid.*, f.27; H.C.A.Misc. 821, warrant dated 29 Aug. 1670; H.C.A. Muniment Books, vol.IV, f.46, patent dated 13 Sept. 1670.

James Waller	Registrar	6 July 1676 ¹
Sir William Petty	Judge	11 July 1676 ²
Captain Francis Robinson	Marshal and Water- bailiff	29 July 1682 ³
Dr. Henry Stiles	Judge	23 Aug. 1683 ⁴
Thomas Wilkinson	Registrar	23 Aug. 1683 ⁴
Dr. Henry Stiles	Judge	24 June 1685 ⁵
Sir Paul Ricant	Judge	7 Aug. 1686 ⁶
Sir Paul Ricant	Judge	9 Dec. 1690 ⁷

Ulater

Viscount Chichester	Vice-Admiral	6 Feb. 1638 ⁸
John Davis	Vice-Admiral	28 Mar. 1661 ⁹
Patrick Savage	Marshal	28 Mar. 1661 ¹⁰
John Dalway	Judge	30 Mar. 1661 ¹¹
— Gorges	Vice-Admiral	9 Jan. 1665/6 ¹²
Nicholas Turk	Judge	9 Jan. 1665/6 ¹³
Arthur Le Squire	Marshal	26 Mar. 1667 ¹⁴
M. Louis de Blancque- fort de Duras	Registrar	7 Apr. 1670 ¹⁵

1. Ad. ²
~~1755~~, f. 33v. Out letters relating to Admiralty and Vice-Admiralty,
2. Ibid., f. 34.
3. Ibid., f. 38.
4. Ibid., f. 40 v.
5. H.C.A. Misc. 822, Vice-Admiralty warrants; H.C.A. Muniment Books, vol. III, f. 93, patent dated 1 July 1685.
6. H.C.A. Misc. 822, Vice-Admiralty warrants; H.C.A. Muniment Books, vol. III, f. 150.
7. H.C.A. Misc. 822; H.C.A. Muniment Books, vol. IV, f. 42, patent dated 21 Feb. 1690/1.
8. H.C.A. Misc. 820, Vice-Admiralty Warrants.
9. H.C.A. Muniment Books, vol. I, f. 145.
10. Ibid., f. 155.
11. Ibid., f. 151.
12. Ad. ²
~~1755~~, f. 12; H.C.A. Muniment Books, vol. I, f. 249, patent dated 16 Jan. 1665/6.
13. Ad. ²
~~1755~~, f. 12; H.C.A. Muniment Books, vol. I, f. 244, patent dated 10 Jan. 1665/6.
14. Ad. ²
~~1755~~, f. 18; H.C.A. Misc. 821, Vice-Admiralty Warrants, warrant dated 15 May 1667; H.C.A. Muniment Books, vol. I, f. 273, patent dated 13 June 1667.
15. Ad. ²
~~1755~~, ff. 26, 26v., warrant repeated 24 Aug. 1670; H.C.A. Muniment Books, vol. II, f. 45, patent dated 22 Aug. 1670.

Francis, Earl of Longford	Vice-Admiral	12 June 1680 ¹
Captain Gustavus Hamilton	Vice-Admiral	17 June 1682 ²
Richard Turke	Judge	14 Aug. 1684 ³
James Montgomery	Registrar	26 Aug. 1684 ³
Gustavus Hamilton	Vice-Admiral	5 Apr. 1691 ⁴

Munster

Lord Falkland	Vice-Admiral	until 11 Jan. 1633 ⁵
Viscount Wentworth	Vice-Admiral	11 Jan. 1633 ⁵
Viscount Chichester	Vice-Admiral	6 Feb. 1638 ⁵
Sir William Penn	Vice-Admiral	15 Aug. 1660 ⁶
Dr. Joshua Boyle	Judge	15 Jan. 1662/3 ⁷
M. Louis de Blancquefort de Duras	Registrar	7 Apr. 1670 ⁸
Robert Southwell	Vice-Admiral	19 Sept. 1670 ⁹
Sir Robert Southwell	Vice-Admiral	14 Apr. 1677 ¹⁰
Sir Robert Southwell	Vice-Admiral	13 May 1691 ¹¹

1. Ad. ²
1755, f. 37. Out letters relating to Admiralty and Vice-Admiralty.
2. Ibid., f. 38.
3. Ibid., f. 41. Turke succeeded his father.
4. H.C.A. Misc. 823, Vice-Admiralty Warrants; H.C.A. Muniment Books, vol. IV, f. 57, patent dated 30 Apr. 1691.
5. H.C.A. Misc. 820, Vice-Admiralty Warrants.
6. H.C.A. Misc. 821, Vice-Admiralty Warrants; H.C.A. Muniment Books, vol. I, f. 20, patent dated 1 Sept. 1660.
7. H.C.A. Misc. 821; H.C.A. Muniment Books, vol. I, f. 23, patent dated 23 Jan. 1662/3.
8. Ad. ²
1755, ff. 26, 26v., warrant repeated 22 Aug. 1670; H.C.A. Muniment Books, vol. II, f. 45, patent dated 22 Aug. 1670.
9. Ad. ²
1755, f. 26v.; H.C.A. Misc. 821; H.C.A. Muniment Books, vol. II, f. 48.
10. Ad. ²
1755, f. 34.
11. H.C.A. Misc. 823, Vice-Admiralty Warrants; H.C.A. Muniment Books, vol. IV, f. 48, patent dated 27 May 1691.

Leinster

Lord Chancellor Loftus	Vice- Admiral	[until 28 Sept. 1637]
Sir Robert Loftus	Vice-Admiral	28 Sept. 1635 ¹
Sir George Wentworth	Vice-Admiral	6 Nov. 1640 ¹
Sir George Wentworth	Vice-Admiral	25 July 1660 ²
Edward Cooke	Judge	6 Aug. 1660 ³
Edward Vernon	Vice-Admiral	21 July 1666 ⁴
Carey Dillon	Vice-Admiral	10 Mar. 1667/8 ⁵
M. Louis de Blanquefort de Duras	Registrar	7 Apr. 1670 ⁶
Carey, Earl of Roscommon	Vice-Admiral	10 Jan. 1685/6 ⁷
Henry Wallop	Vice-Admiral	15 July 1691 ⁸
John, Earl of Bath	Vice-Admiral	31 Dec. 1691 ⁹

Connaught

Sir George St. George	Vice-Admiral	17 Dec. 1638 ¹⁰
Oliver St. George	Vice-Admiral	20 July 1660 ¹¹
M. Louis de Blanquefort de Duras	Registrar	7 Apr. 1670 ⁶
William, Earl of Clanricarde	Vice-Admiral	3 June 1672 ¹²

1. H.C.A. Misc. 820, Vice-Admiralty Warrants.
2. H.C.A. Misc. 821; H.C.A. Muniment Books, vol. I, f. 1, patent dated 8 Aug. 1660.
3. H.C.A. Misc. 821; H.C.A. Muniment Books, vol. I, f. 108.
4. Ad. ²₁₇₅₅, Cut letters relating to Admiralty and Vice-Admiralty, f. 14; H.C.A. Misc. 821. Vernon's patent was revoked 15 May 1667, Ad. ²₁₇₅₅, f. 18v.
5. H.C.A. Misc. 821, Vice-Admiralty Warrants; Ad. ²₁₇₅₅, f. 19v.; H.C.A. Muniment Books, vol. II, f. 1B, ²₁₇₅₅ patent dated 3 Mar. 1667/8.
6. Ad. ²₁₇₅₅, ff. 26, 26v. Warrant repeated 22 Aug. 1670; H.C.A. Muniment Books, vol. II, f. 45, patent dated 22 Aug. 1670.
7. H.C.A. Misc. 822, Vice-Admiralty Warrants; H.C.A. Muniment Books, vol. III, f. 144, patent dated 28 July 1686.
8. H.C.A. Misc. 823, Vice-Admiralty Warrants; H.C.A. Muniment Books, vol. IV, f. 49, patent dated 23 July 1691.
9. H.C.A. Misc. 823; H.C.A. Muniment Books, vol. IV, f. 68, patent dated 22 Jan. 1691/2.
10. H.C.A. Misc. 820, Vice-Admiralty Warrants.
11. H.C.A. Misc. 821.
12. Ibid.

Sir Oliver St. George	Vice-Admiral	20 Dec. 1690 ¹
John Eyres	Vice-Admiral	31 Dec. 1695 ²
Sir Oliver St. George, Bart.	Vice-Admiral	6 Jan. 1695/8 ³

Jamaica

Lord Windsor	Admiral	
William Michell	Judge	Sept. 1662 ⁴
Charles Hardres	Registrar	Sept. 1662 ⁶
Sir Charles Lyttelton	Judge	May 1663 ⁷
Mr. Porter	Proctor	May 1663 ⁸
Thomas Lynch	Marshal	Oct. 1663 ⁹
Sir Thomas Modyford	Vice-Admiral	15 Feb. 1663/4 ¹⁰
George Reid	Advocate General	9 Oct. 1665 ¹¹
Sir James Modyford	Judge	28 Aug. 1667 ¹²
Sir Thomas Lynch	Vice-Admiral	13 Jan. 1670/1 ¹³
John, Lord Vaughan	Vice-Admiral	3 Nov. 1674 ¹⁴
Sir Henry Morgan		
Lt.-Colonel William		
Beeston		
Lt.-Colonel Robert		
Byndloss		
	Judges	2 Apr. 1676 ¹⁵

1. H.C.A.Misc.822; H.C.A.Muniment Books, vol.IV, f.38, patent dated 21 July 1691.
2. H.C.A.Misc. 823; H.C.A.Muniment Books, vol.IV, f.137.
3. H.C.A.Misc.823; H.C.A.Muniment Books, vol.IV, f.139.
4. H.C.A.Vice-Admiralty Proceedings 59, passim; Ad. ²₁₇₅₅, Out letters relating to Admiralty and Vice-Admiralty, f. 6.
5. H.C.A., V.A.Prec.59, passim, Cal.S.P.Col.A.& W.I., 1661-1668, no. 364.
6. H.C.A.V.A.Prec.59, passim.
7. Ibid., passim; Cal.S.P.Col.A.& W.I., 1661-1668, nos.645,648.
8. H.C.A.V.A.Prec. 59, f.37.
9. Ibid., f.45v.
10. Ad. ²₁₇₅₅, ff.5v, 6.
11. Cal.S.P.Col.A.& W.I., 1661-1668, no.1062.
12. Ibid., no. 1689.
13. Ad. ²₁₇₅₅, ff.28v. 29.
14. Ibid., ff.33, 33v.
15. Cal.S.P.Col.A.& W.I., 1675-1676, no.860.

Sir Thomas Lynch
Charles, Earl of Carlile
Sir Thomas Lynch

Marshal 20 Feb. 1677/81
Vice-Admiral 11 Mar. 1677/82
Vice-Admiral & Judge 6 Aug. 1681³

Reginald Wilson
Sir Philip Howard
Colonel Hender Molesworth
William Beeston
Richard Lloyd
Mr. Hauses
Sir William Beeston

Registrar 23 Aug. 1681⁴
Vice-Admiral 28 Oct. 1685⁵
Vice-Admiral 25 July 1689⁶
Vice-Admiral 7 Sept. 1692⁷
Judge 13 May 1693⁸
Judge-Advocate 13 May 1693⁹
Vice-Admiral 14 Dec. 1696¹⁰

Maryland¹¹

Leonard Calvert
Leonard Calvert
Giles Brent
Leonard Calvert
William Stone
Thomas Greene
Richard Husbands

Admiral 15 Apr. 1637¹²
Admiral 4 Sept. 1642¹³
Deputy-Admiral 11 Apr. 1643¹⁴
Admiral 6 Sept. 1644¹⁵
Admiral 6 Aug. 1648¹⁶
Deputy-Admiral 2 May 1649¹⁷
Admiral or Vice-Admiral dismissed
Admiral 23 Feb. 1649/50¹⁸
Deputy-Admiral 22 May 1650¹⁹

Thomas Hatton

1. Ad. ² 1755, Out letters relating to Admiralty and Vice-Admiralty, f. 38.
2. Ibid., f. 38v.
3. Ibid., f. 37v; Cal. S.P. Col. A. & W.I., 1681-1685, no. 1260.
4. Ad. ² 1755, f. 37v.
5. Cal. S.P. Col. A. & W.I., 1685-1688, no. 433.
6. Ibid., 1689-1692, no. 292.
7. Ad. ² 1045, Out letters relating to Admiralty and Vice-Admiralty, p. 228; H.C.A. Misc. 823, Vice-Admiralty Warrants; H.C.A. Muniment Books, vol. IV, patent dated 15 Sept. 1692
8. Cal. S.P. Col. A. & W.I., 1693-1696, no. 346.
9. Ibid., no. 345.
10. H.C.A. Misc. 823; H.C.A. Muniment Books, vol. IV.
11. Until 1692 all appointments were made by the Proprietor or his Deputy. As a rule the governor was also admiral.
12. Arch. Md. Proc. Coun., 1636-1667, p. 49.
13. Ibid., p. 109.
14. Ibid., p. 130.
15. Ibid., p. 152.
16. Ibid., p. 202.
17. Ibid., p. 231.
18. Ibid. pp. 248-249.
19. Ibid., p. 255.

Edward Gibbons	Admiral	20 Jan. 1650/1 ¹
Charles Calvert	Admiral	16 Feb. 1665/6 ²
Leoline Copley	Vice-Admiral	20 Jan. 1691/2 ³
Francis Nicholson	Vice-Admiral	19 Feb. 1693/4 ⁴
George Robotham)	Judges	28 Feb. 1695 ⁵
Nicholas Greenberry)	Judge	23 Oct. 1697 ⁶
George Robotham	Vice-Admiral	4 Aug. 1698 ⁷
Francis Nicholson		

New England

Captain Francis West	Admiral	8 Nov. 1622 ⁸
Sir Samuel Argall	Admiral	15 Jan. 1622/3 ⁹
Captain John Mason	Vice-Admiral	1 Oct. 1635 ¹⁰
Joseph Dudley	Admiral	13 Nov. 1685 ¹¹
Richard Wharton	Judge	19 Nov. 1685 ¹¹
Richard Chamberlain	Registrar	19 Nov. 1685 ¹¹
Joseph Smith	Marshal	19 Nov. 1685 ¹¹
Sir William Phipps	Vice-Admiral	21 Dec. 1691 ¹²
Sir Edmond Andros	Vice-Admiral	17 Feb. 1691/2 ¹³
Earl of Bellamont	Vice-Admiral	10 Oct. 1698 ¹⁴

1. Arch.Md.Proc.Coun., 1636-1667, pp. 261-263. Gibbons is spoken of as deceased on 23 Oct. 1656, Ibid., p.326.
2. Ibid., p.542.
3. H.C.A.Muniment Books, vol.IV, f.58.
4. H.C.A.Misc.823, Vice-Admiralty Warrants; H.C.A.Muniment Books, vol.IV, f.112.
5. Cal.S.P.Col.A.& W.I., 1693-1696, no.1691. Robotham's Commission was for the Eastern Shore, Greenberry's for the Western Shore.
6. Ibid., 1696-1697, no.1390. The commission was for the Eastern Shore only; Robotham took the oath on 25 Oct. 1697.
7. H.C.A.Misc.823.
8. Proc.Amer.Antiq.Soc.April, 1867, p.69. West's commission was for the duration of his voyage.
9. Ibid., p.79.
10. Tuttle, C.W. and Deane, J.W. Captain John Mason, p.347.
11. Cal.S.P.Col.A. & W.I., 1685-1686, nos. 457, 468, 469, 470. No commissions from the Lord Admiral have been found.
12. Ad. ²₁₀₄₅, Out letters relating to Admiralty and Vice-Admiralty, p.128; H.C.A.Muniment Books, vol.IV, f.63. Phipps's commission was for Massachusetts only.
13. H.C.A.Misc. 822, Vice-Admiralty Warrants.
14. H.C.A.Muniment Books, vol.IV, f.204. Bellamont had one patent for Massachusetts, New York and New Hampshire.

New Hampshire.

Edward Cranfield	Vice-Admiral	20 Apr. 1682 ¹
Richard Chamberlain	Judge	29 June 1682 ²
James Sherlocke	Registrar	29 June 1682 ²
Samuel Allen	Vice-Admiral	17 Feb. 1691/2 ³
Charles Storey	Judge	6 June 1696 ⁴

Newfoundland

Captain Richard Whitbourne	Vice-Admiral	1615 ⁵
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New York

Sir Edmund Andros	Vice-Admiral	18 May 1678 ⁶
Colonel Thomas Dongan	Vice-Admiral	1683 ⁷
Colonel Thomas Dongan	Vice-Admiral	10 June 1686 ⁸
Captain Palmer	Judge	21 Oct. 1686 ⁹
Sir Edmond Andros	Vice-Admiral	7 Apr. 1688 ¹⁰
Henry Slaughter	Vice-Admiral	14 Nov. 1689 ¹¹
Jarvis Marshall	Marshal and Water- bailiff	7 July 1691 ¹²

1. Ad.² 1755, out letters relating to Admiralty and Vice-Admiralty, f. 37v.
2. Ibid., f.38. A blank marshal's commission was also issued.
3. Ad.² 1045, pp.146, 147; H.C.A.Misc.822; H.C.A.Muniment Books, vol.IV, f.76, patent, dated 7 April 1692, included southern end of Isle of Shoals.
4. H.C.A.Misc.823, Vice-Admiralty Warrants; H.C.A.Muniment Books, vol.IV, f.145, patent dated 17 June 1696. Storey left New Hampshire in June 1697, of.Cal.S.P.Col.A.& W.I., 1696-1697, no.1096.
5. Richard Whitbourne, Discourse and Discovery of Newfoundland, f.623.
6. Cal.S.P.Col.A.& W.I., 1677-1680, no.708. No commission from the Lord Admiral has been found.
7. Documents relative to New York, vol.III, p.337. No commission from the Lord Admiral has been found.
8. Ibid., p.380. No commission from the Lord Admiral has been found, but James II, as king and Lord Admiral, may have issued only one patent conferring powers both as governor and vice-admiral.
9. Cal.S.P.Col.A.& W.I., 1688-1688, no.925.
10. Documents relative to New York, vol.III, p.640; MS.volume in Admiralty Library.
11. Documents relative to New York, vol.III, pp.626, 627. No patent from the commissioners of the Admiralty has been found.
12. Cal.S.P.Col.A.& W.I., 1689-1692, no.1629.

Benjamin Fletcher	Vice-Admiral	26 Feb. 1691/2 ¹
Joseph Dudley)	Judges	26 Mar. 1691/2 ²
Thomas Johnson)	Judge	1696 ³
William Pinholme	Vice-Admiral	10 Oct. 1698 ⁴
Earl of Bellamont		

Pennsylvania

Benjamin Fletcher	Vice-Admiral	26 Feb. 1691/2 ⁵
Robert Quarrey	Judge	29 Apr. 1697 ⁶
William Rodney	Registrar	29 Apr. 1697 ⁶
Robert Webb	Marshal	29 Apr. 1697 ⁶
Edward Chilton	Advocate	29 Apr. 1697 ⁶

Rhode Island

Peleg Sandford	Judge	29 Apr. 1697 ⁷
Nathaniel Coddington	Registrar	29 Apr. 1697 ⁷
William Allen	Marshal	29 Apr. 1697 ⁷
Benjamin Lynde	Advocate	29 Apr. 1697 ⁷

South Carolina

Joseph Morton	Judge	29 Apr. 1697 ⁸
Thomas Carey	Registrar	29 Apr. 1697 ⁸
Richard Bollinger	Marshal	29 Apr. 1697 ⁸
Jonathan Armory	Advocate	29 Apr. 1697 ⁸

1. Ad. ²~~1045~~, Out letters relating to Admiralty and Vice-Admiralty, pp.150, 151; H.C.A.Misc.823, Vice-Admiralty Warrants; H.C.A.Muniment Books, vol.IV, f.85, patent, dated 13 April 1692, included also East and West Jersey, Pennsylvania, and Newcastle.
2. Cal.S.P.Col.A.& W.I., 1689-1692, no.372.
3. Rawlinson B. 383, f.397.
4. H.C.A.Muniment Books, vol.IV, f.204.
5. Ad. ²~~1045~~, Out letters relating to Admiralty and Vice-Admiralty, pp.150, 151; H.C.A.Misc.823, Vice-Admiralty Warrants; H.C.A.Muniment Books, vol.IV, f.85, patent dated 13 April 1692.
6. H.C.A.Misc.823; H.C.A.Muniment Books, vol.IV, ff.161, 164, 165, 166, patents, dated 26 June 1697, included also West Jersey and the three Lower Counties.
7. H.C.A.Misc.823; H.C.A.Muniment Books, vol.IV, ff.181, 184, 185, 186, patents dated 26 June 1697.
8. H.C.A.Misc.823; H.C.A.Muniment Books, vol.IV, ff.168, 171, 172, 173, patents dated 26 June 1697.

Tangiers

Andrew Rutherford, Earl of Teviot	Vice-Admiral	[1663] ¹
John Fitzgerald	Vice-Admiral	10 June 1664 ¹
John, Lord Belasyse	Vice-Admiral	29 Jan. 1664/5 ²
William Johnson, D.C.L.	Judge	24 Apr. 1667 ³
Henry Norwood	Vice-Admiral	1667 ⁴
William, Earl of Inchiquin	Vice-Admiral	4 Mar. 1674 ⁵
George Talbot	Registrar	22 Nov. 1676 ⁶
- Bacher	Judge	13 Mar. 1677/8 ⁷
Colonel Percy Kirke	Vice-Admiral	1 Oct. 1682 ⁸

Virginia

Thomas, Lord Culpepper	Vice-Admiral	22 Oct. 1679 ⁹
Francis, Lord Howard of Effingham	Vice-Admiral	20 Oct. 1683 ¹⁰
Sir Edmond Andros	Vice-Admiral	17 Feb. 1691 ¹¹
Francis Nicholson	Vice-Admiral	4 Aug. 1698 ¹²

1. Ad. ² 1755, f. 7. Out letters relating to Admiralty and Vice-Admiralty.
2. Ibid., f. 8. Lord Belasyse ceased to be governor of Tangiers in 1666, and certainly then resigned the admiralty.
3. Ibid., f. 18v.
4. Ibid., f. 19. His patent from the Lord Admiral has not been found, but on 27 June 1667 a commission empowering him to issue Letters of Marque was issued. This does not describe him as Vice-Admiral, but presumably he was acting in that capacity.
5. Ibid., f. 33v.
6. Ibid., f. 34. A blank marshal's commission was issued on the same day.
7. Ibid., f. 36v.
8. Ibid., f. 38v.
9. Ibid., f. 37.
10. Ibid., f. 41.
11. Ad. ² 1045, Out letters relating to Admiralty and Vice-Admiralty, pp. 145, 146; H.C.A. Misc. 822 Vice Admiralty Warrants; H.C.A. Muniment Books, vol. IV, patent dated 26 June 1697.
12. H.C.A. Misc. 823, Vice-Admiralty Warrants; H.C.A. Muniment Books, vol. IV, f. 193.

APPENDIX I (Continued) ---

Lists submitted by Randolph

The Names of Persons to be the Judges Registers and Marshalls in the Courts of Admiralty and also of the Attorneys Generall in the following Colonyes and provinces on the Continent of America./¹

Virginia and North Carolina	Edward Hill; (of the Councill Judge; Myles Cary - - - - - Register Michael Sherman - - - - - Marshall Edward Chilton - - - - - Attorney Generall
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Maryland	Henry Jolly on ye Western Shore of ye Bay. Judge: George Robotham, on ye Eastern Shore. Judge: Henry Denton - - - - - Register: Thomas Collier - - - - - Marshall. Edward Chilton - - - - - Attorney Generall
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Pensilvania and West Jersey ~~Robt. Quarry~~ Ric: Holloway Judge	Rich: Holloway - - - - - Judge: William Rodney - - - - - Register: Robert Webb: - - - - - Marshall: Edward Chilton - - - - - Attorney Generall.
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New York:	Collonel Wm Smith - - - - - Judge: John Tudor - - - - - Register Jervaise Marshall - - - - - Marshall James Graham - - - - - Attorney Generall
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East Jersey and ye Colony of Connecticott to be under the Jurisdiction of ye Court of Admiralty in New Yorke.

Road Island Colony:	Peleg Sandford - - - - - Judge Nathaniell Coddington - - - - - Register William Allen - - - - - Marshall Thomas Newton: - - - - - Attorney Generall
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1. C.O. 323/2, 5, 111.

Province of the	Nathaniell Byfield	- - - - -	Judge
Massachusetts Bay:	Laurence Hammond	- - - - -	Register
	Henry ffanklin	- - - - -	Marshall
	Thomas Newton	- - - - -	Attorney Generall

Memorandum: that the fees of the Officers in the Seuerall Courts of Admiralty (now not known.) be ascertained by the Judge of ye Court of Admiralty in England to be approved of and allowed by the Governor and Councill in Each Respective government or otherwise as shall be directed:

That upon the absence Removall or death of any of the Said Officers, the Governor in those places be impowered to appoint other persons to officiate in their Rooms: and to return the Names of Such persons to the Admiralty in England to receiue from thence Deputations accordingly; that there can be no establishment¹ of Courts of Admiralty in the Bahama Islands Carolina - or in any other of the Proprieties untill there bee a regulation in the government as is directed in the Act for preventing of frauds and Regulating abuses in the plantation Trade:

All which is humbly submitted

July 31: 1696

by etc. P. A Randolph:.

1. Randolph wrote establishing and establishment in the same space. It is impossible to be certain which was written first.

The Names of persons to be appointed the Officers in the
Courts of Admiralty:¹

New Yorke	Collonel William Smith	- - - -	Judge:
	John Tuder	- - -	Register
	Jervaise Marshall	- - -	Marshall:
Bermudae	Gilbert Nelson	- - -	Judge
	Samuell Spoforth	- - -	Register:
	Samuell Daffey	- - -	Marshall,
	Nicholas Trott ju:	- - - -	Attorney Generall
South Carolina	James Moore	- - -	Judge,
	Ralph Izard	- - -	- Register.
	Edward Rawlings	- - -	- Marshall
	Jonothan Armory	- - -	- Attorney Generall
Bahama Islands	Christopher Hooper	- - -	Judge.
	John Warren	- - -	- Register:
	John Corke	- - -	- Marshall:
	John Graves	- - -	Attorney Generall

This was given in by Mr. Randolph ye 10th of Augt.

The names of fitt persons to be the Officers in the Court of
Admiralty in the province of New Hampshire in N: England/

John Hincke	- - -	Judge
Robert Tufton Mason:		Register
Pheasant Estwick:		Marshall
Thomas Newton -		Attorney Generall.

1. C.O. 323/2, 5, v.

The Names of Persons to be appointed the Judges and
Registers and Marshalls in the Courts of Admiralty.¹

Bermudas -	Gilbert Nelson Samuell Spoforth Samuell Dafroy -	Judge Register Marshall
South Carolina -	Joseph Norton Thomas Carey - Richard Bollinger	Judge Register Marshall
Virginia and North Carolina	Edward Hill Miles Carey Michael Sherman	Judge Register Marshall
Maryland -	Sir Thos. Lawrence Baronet Henry Denton - Thomas Collier	Judge Register Marshall
Pensilvania and West Jersey -	Robert Quarry Wm Rodeney Robert Webb	Judge Register Marshall
New York, East Jersey and Colony of Connecticut in New England)	William Smyth John Tudor Jarvis Marshall	Judge Register Marshall
Colony of Road Island	Peleg Sandford Nathaniel Coddington Wm Allen	Judge Register Marshall
Province of the Massachusetts) Bay and Province) of New Hamp-) shire in New) England)	Nathaniel Byfield Lawrance Hammond Henry Franklin -	Judge Register Marshall
The Bahama Islands -	John Layton Thomas Waldoock Joseph Harwood	Judge Register Marshall

A P P E N D I X I I .

Ad.2/1755, Out Letters relating to Admiralty and Vice-Admiralty,

ff.28v.,29. Commission in the usuall forme constituteing and appointing Sr Thomas Lynch Kt Lt governour of Jamaica, his R Highnes Vice Admirall of ye Island of Jamaica With a clause therein Revoking the Comission for that Employment formerly granted unto Thomas Modiford Esqr Dated at Whitehall the 13th of January 1670.

To Sr Thomas Lynch Kt Lt governour of Jamaica
By Vertue of the power & authority unto Mee Granted by ye King my Sovereigne Lord & Brother by his Mats Letters Patent under his Great Seale of England I doe out of ye good opinion I haue of yo^r fidelity & experience in that behalfe hereby nominate constitute & appoint you to be Commander in Cheife of all such of his Mats ships & vessells as now are or hereafter shalbe employed for his Mats service to or at ye Island of Jamaica in America, & the parts thereabouts, And you are hereby fully authorised & empowered from tyme to tyme to Command, Order and Direct ye sd ships & Vessells as you shall judge most advantageous for his Mats service in those pts; And ye respective Commanders officers seamen and

all other persons belonging to his Majesty's said ships & Vessells are hereby strictly charged and required to observe & obey your Commands, Orders and Directions accordingly, as they tender his Majesty service, and will answer the contrary at their perills; - Provided nevertheless, That in case it shall at any tyme hereafter be judged fitt for his Majesty's service to send a Fleete of Shipps into America under ye Command of any person comissionated as Admirall, Vice Admirall, or Reare Admirall thereof, That then in such case nothing herein conteyned shall extend to empower you to give Order to such Fleete or Fleetes, or the Commanders Thereof. And I doe hereby authorise & empower you, (whom I have appointed my Vice Admirall of the sd Island of Jamaica) to appoint a Judge, Advocate, Register, Proctor & Marshall of ye Court of Admiralty of Jamaica aforesaid for the due and orderly management of all proceedings in ye Vice Admiralty of ye said Island, dureing ye vacancies of the said Places or untill I shall thinke fitt to give further Order therein; And for the premisses this shalbe your Warrant, given under my Hand and Seale at Whitehall this 13th of January 1670.

A P P E N D I X II (Continued)

Ad.2/1755,

f.36v. Whereas the King my Sovereigne Lord and Brother by his Comission under the Great Seale of England, hath Nominated and appointed Me high Admirall of Tanger and Its Dependencies, and hath therein given unto Mee full power, warrant and authority to Constitute a Vice Admirall and all Officers in the high Court Admiralty, In pursuance whereof I doe hereby Nominate and appoint/Bacher Gent to be Judge of the high Court of Admiralty of the said City of Tanger and its Dependencies, Giveing unto him full warrant and authority to hold Courts, to giue Decrees and Sentences (according to the Laws and practices of that City in all Actions and Causes competent to be decided by the Judge of the Court, And generally to doe and performe all other Acts and things that have beene formerly in Use or are knowne, rightly to belong to yt Office, as fully & freely as any other judge of the high Court of Admiralty of yt City hath or might haue done at any time heretofore Giueing also unto him all fees, priuiledges, Immunities and Casualties belonging to the said Office. Provided always as it is hereby declared That ys Comission shall stand and be of force during my Pleasure only. Giuen under my hand and Seale at St. James's ye 13th Day of March 167⁷/₈

A P P E N D I X II (Continued)

Ad. 2/1755, f.37v.

To Reginald Wilson Esqr

Whereas the King my Soueraigne Lord and Brother by his
Comission under ye Great Seale of England, hath Nominated and
appointed Me high Admirall of Jamaica and Its Dependencies
in America, and hath therein given unto Me full power warrant
and authority to Constitute a Vice Admirall and all Officers
in the high Court of Admiralty; In pursuance whereof I doe
hereby Nominate, Constitute and appoint you to be Register
of the high Court of Admiralty of Jamaica and its Dependencies
accordingly; Giveing you full Warrant and authority to doe,
execute and performe All Acts and things yt have beene formerly
in use or are knowne rightly to belong to yt Office, with
all such priviledges perquisites, and Immunityes as are
thereunto belonging. Provided always as it is hereby
declared, yt this Comission shall stand and be of force
dureing my pleasure only. Given under my hand and Seale
at Edinburgh ye 23d day of August. (81).

APPENDIX II (Continued)

Ad.2/1755, f. 36.

Whereas I am informed yt Sr Thomas Lynch by his Deputy hath executed ye place of Marshall of the Admiralty of Jamaica for these seuerall yeares last past, and he haweing made his humble Request unto Me, yt I would continue him in ye said Employment; I haue thought fit to condescend thereunto. I doe therefore hereby nominate, constitute and appoynt him ye said Sr Thomas Lynch Knt. Marshall of ye Admiralty of Jamaica, and ye parts thereunto belonging, wth full power and Authority to appoint a Deputy for ye Due execution of the said place; And he is to enjoy the same with all benefitts, Priviledges and Immunities thereunto belonging, but dureing my pleasure only Given under my hande and Seale at St. James's ye 20th day of ffebruary 167⁷/₈

A P P E N D I X III.

Acct of Pirates Goods from Capt Wilson.

1683.

Jamaica

October 23 Pyratts goods wch were taken by Capt.
George Spurr & others and condemned

4 Packs of Cochenela appraised at	480: - : -	
6 ps plate qt 33 at 4 ^s 10 ^d	£ 80:4:8	
	£560:4:8	

Charges	
Judges Fees	£12: 12: 6
Advocates Fees	£ 6: - : -
Register's Fees	£ 9: 4: -
Marshalls Fees	£14: 10: 8
Paid for Information,	£10: - : -
Charges of Messing &	
Boatage	£52: 7: 2

£507. 17. 6

October 23 Pyratts Goods wch was seized in ye hands
of Augustin Jordan and others, and
condemned

3 baggs pc $\frac{8}{8}$ qt 2395 ps . . .	£598: 15: -	
17 ps gold	£ 17: - : -	

Charges	
Judges ffees	£12: 12: 6
Advocates ffees	£ 6: - : -
Register's ffees	£ 9: 11: -
Marshalls Fees	£15: 12: 9
Paid for Infformations	
Sundry Charges of Mess-	£20: 16: 3
engers Constables Doctore	£34: 12: 6
& ffunerall Charges	£551. 2. 6

1059. - -

1683

Brought over

£1059: - : -

Febry 1 Pyratts goods Condemned, that was taken
by one Richard Ward & John Thomas

4 small baggs of Cochenela qt 184

appraised att £124: 4: -

200 ps $\frac{8}{8}$ £ 50: -: -

Charges

Judges ffees £9: - : -

Advocates Fees £3: - : -

Register's Fees £4: 12: 3

Marshalls Fees £11: - : 8

pr for information)

and other charges) £8: - : -

£35: 12: 11

138: 11: 1

1197: 11: 1

The foregoing Account amounting to £1197: 11: 01 being all that was any Way Seized to ye best of my knowledge in ye time of ye Government of his Excellency Sir Thomas Lynch as Goods Pyratically taken, Excepting a small parcel of dry goods, that ye Treaspense tooke from Capt. Spencer, and were sent downe hither from Spaniola being about ye value of Thirty pounds, and a Small Barque Commanded by one Augustin Albardez who was Condemned here for a Pyratt; and ye sd Barque has been ever since Attendant to the Ruby Frigatt and in Publick Service.

R. Wilson,

Register.

A P P E N D I X III (Continued)

H.C.A. Vice-Admiralty Proceedings, 59, p.5 from end.

The fees of the Courte of Admiralty

for receiuinge and fileinge a petition	00 - 4 - 6
ffor every oath of a witnes out of Courte	00 - 1 - 6
ffor every order made in Courte	00 - 5 - 0
ffor every sumons or Citacions	00 - 2 - 6
ffor arrest of persons	00 - 8 - 0
as the Courte shall indolge ffore every default and Non:appearance	
ffor the adiourneinge every Cause in Courte	00 - 6 - 8
ffor the first order of decrees betwixt party & party	1 - 0 - 0
ffor every sentence betwixt party and party	2 - 0 - 0
ffor taxinge costes	00 - 7 - 6
ffor the process in Prizes	
ffor the petition fileinge	00 - 6 - 8
ffor every adiournement	00 - 10 - 00
ffor the seale to the Deckes ^{1.}	00 - 6 - 8
ffor adiudicon of every l2d in pound to the vallue	
ffor the Coppy of euey decree	1 - 00 - 00
ffor every Comcon to examine witnesses	03 - 00 - 04

1. I am indebted to Mr. Jenkinson for this reading.
2. i.e., Commission.

A P P E N D I X I V

H.C.A.Vice-Admiralty Proceedings 59, ff.14-18.

Capt Ming's Comander of)
the ffrigatt Centurion)
Capt Swart Comander of)
the ffrigatt Griffin pro)
the rest of ye Comand)
and Officers of the)
united expedicon upon)
St Iago de Cuba vs)
the Seuen shippes and)
Barkes taken there their)
Tackle and Furniture)
Goods, wares and)
merchandize etc.)

The Cause of the Shipps Taken
att St Iago de Cuba.

Att a Court of Admiralty held
the 29th day of October 1662
before Wm Michell Esq Doctor of
ye Civill Law and Judge of the
same Court.

Seuerall Peticons were this Day Presented on the
behalfe of ye Prizes taken at St. Iago de Cuba and perticuler

Claymes were preferred into ye sd Court and upon hearing thereof and allegations then urged Cause was found to Order that ye Petitions should remaine in the state and Condicion as by their Advocate were moued and were adiourned untill ye next Court.

ffurther Inquiry was also made by ye sd Court to be Informd of ye true matter of ffact touching ye Prizes and Direccions given to Capt Xpofer Mings Comander in chief for that Expedition for St Iago de Cuba should appeare at ye next Court day to satisfy the Court of his proceedings therein touching the Prizes.

This same Day open Precognizacon was alsoe made there seuerall times for all manner of persons proprietor Owners Victuallers masters or others Concerned in ye sd Vessells to appear next Court Day or else one Default to be recorded from this Sessions.

Atta Court of Admiralty held the third day of Novemb^r
in the yeare of our Lord 1662 before ye honble Michell Esq
Doctor of ye Ciuill Law and Judge of ye same Court.

Mr. Hardres moueing on behalfe of his Matie that
sentence might passe agst the vessells and goodes now in ye
Harbour of Sagway and brought from St Jago de Cuba as Prizes
for his Maties use uppon wch there was seuerall monitions
Emitted on behalfe of ye Petitions giuen in in the foregoing
Court ^x [In margin] and noe body appeared upon publick
Citation and monition second Default was recorded / Whereupon
Capt: Mings made report that it was by him agreed upon with
the private men of Warr that in order to their uniting in
this Expedition that they should haue Equall benefitt of all
Such Prizes as should be taken of Shippes with their Lading
in ye present Expedition for Cuba upon wch the Court thought
good to referr the same to be Enquired after and appointed
Capt Xpofer Mings Commander in cheife in ye sd Expedition
John Man Esq Epenetas Crosse Esq^r John Loueing and Edward
Pinherne serchts to receive and heare the seuerall Claymes
and Pretences of ye Officers of ye Priuate men of warr and
others Concerned to report ye truth of ye matter of fact to this
Court in ye afternoone and before ye sd persons withdrew from
ye Court ye Court demanded what ye number of Vessells were

whither they were all taken in ye port of St Iago de Cuba
and who could Euidence ye same upon wch was Called Capt Lacy
Pilott of his Maties ffrigatt Centurion being sworne in Court
did uppon their oaths affirme and say the sd vessells were
taken in ye Port and harbour of St Iago de Cuba and that ye
marriners of ye same did Escape by boates and swimming
whereupon open Proclamacion being made thrice in Court that all
and Singuler that haue or pretend to haue any right Tytle
or Interest in ye vessells whose names are not knowne that
they should appeare and shew Cause why sentence should not
passe upon ye sd Vessells as Lawfull Prize but noe body
appearing the Court proceeded to Decree.

The Decree. James Duke of Yorke and Albany Earle of Ulster
Lord High Admirall of England Ireland and Wales and ye
Dominions and Islands of ye same of ye Towne of Calais and ye
marches thereof of Normandy Gascoigne and Aquitaine as alsoe
of his maiesties Towne of Dunkirke and of his Dominions of
New England Jamaica Virginia Barbadoes St. Christophers Bermudas
and Antego in America and of Guiny Biny and Nigola in Affrica
and of Tanger in ye Kingdome of ffease And alsoe of all and
singuler his Majesties other Dominions wtsoever in parts
Transmaritime Constable of Douer Lord Warden of ye Cinque Ports
and Gouvernor of Portsmouth Knowe ye that W^m Michell Esq^r Doctor

of Lawes and Judge of his Majesties principall Court of Admiralty Established by vertue of ye Powr and Authority Derived from his Excellly Thomas Lord Windesor our Viceadmirall in ye American Seas as apears upon Record in ye sd Court Hauing heard well weighed and Discussed all and singuler the Proceedings meritts and Circumstances of a Cause Judicially Entred and prosecuted in ye sd Court by and on ye Behalfe of his Ma^{ty} in right of ye ffrigatt Centurion Comander Capt Christopher Wings as also in right of ye Capts Commanders Officers souldiers and owners of Diuers Private men of Warr united in a Certaine Expedition wth his matys said ffrigatt Centurion Together wth Causes of reprizall presented in ye sd Court against ye Subiects of ye King of Spaine for ye seizing & takeing of ye Shippes and goods of ye King of Spayne and his subiects It being well knowne that our Soueraine Lord ye King by his royall Instruccions giuen to his Excellly the Lord Windesor Lord Gouvernor of this his maties Island of Jamaica hath Commanded in ffauour of his subiects that by all wayes and meanes wtsoever a Trade and Commerce might be obtained wth ye subiects of ye King of Spaine, and if ye Gouvernor for ye King of Spaine aforesd ye Commerce aforesd should reiect and refuse then to Proceed by fforce and Arms Wherefore ye Gouvernor and Councell of this Island well knowing

that all writtings and propositions of a Commerce and trade
wth ye Gouvernors of ye King of Spayne aforesd in ye west
Indies were utterly refused and reiected Therefore power and
Instrucons were giuen to the aforesd Christopher Mings to
be Comander in cheife in ye sd united Expedition as appeared
in Court and now is recorded together wth ye Testimonies and
Euidences of wittnesses then sworne and ye report and
Informacion of ye aforesd Capt Christopher Mings and others
All wch obligeth the same to be brought to Iudgmt in ye sd
Principall Court of Admiralty and hauing openly monished Cited
and summoned all and all manner of persons wtsoever hauing or
pretending to haue any right Tytle or Interest in the seuen
Vessells or any of them their Tackle and ffurniture or in ye
goods Ware and merchandize in them taken in ye Port of St Iago
de Cuba aforesd (as will appeare upon record in ye Registry
of ye sd Court) and after Diuers other Citacons and Publick
monitions openly made and Proclaymed none appeared but haue
Contumaciouly incurred three Defaults Therefore ye sd Court
proceeded according ye send of ye sd Decree and three Defaults
and Contumacyes being legally accused pronounced and recorded
And ye sd Court hauing duely and Iudiciously admitted the
Allegations proofes and Instrumts there Exhibited made and
produced on ye behalfe of our said Soueraine Lord ye king and

ye private men of war Concerned it appeared that ye sd seuen Vessells whose names are not knowne their Tackle and furniture and ye goods wares and merchandize taken and seized in them or any of them as aforesd did at ye time of ye seizure and Capture thereof belong to ye subiects of ye King of Spaine and that they were surprized and Taken in ye Port of St Iago de Cuba by vertue and according to ye Tenor of ye Comission and Instruccion granted to ye said Capt Christopher Wings Comander in cheife in ye said Enterprize Therefore the sd Wm Michell Esqr Doctor of Law and Iudge of ye sd Court of Admiralty haueing fully and maturely Considered the whole proces nature and meritts of ye Cause and of ye Proofes Informations and allegations therein made Did and Doth Pronounce Decree finally Sentence and adiudge the sd seuen Vessells whose names are nott knowne their Tackle and ffurniture and all and Singuler the goods wares and merchandize seized in them or any of them as aforesd did at ye time of ye seizure and surprizall thereof belonge or had relacon to ye subiects of ye King of Spayne and that ye same were lawfully surprized by force and out to be Decreed and adiudged to our said Soueraine Lord ye King on behalf of his Ma^{ties} ffrigatt Centurion Capt Adrian Swarte Capt George Brimacam Capt Robt Searle Capt John Perdue Capt John Bull and to ye Officers marring Souldiers owners and victuallers therein Concerned

The Tenths thereof and Every part or ye full value thereof being and wch I doe adiudge to be first Taken out and payd to ye use of his royall Highnesse ye Duke of Yorke ye Ld High admirall to be sold Disposed to ye use and behoofe of our soueraingne Ld the King in behalfe of his ffrigatt Centurion the Comanders officers marriners souldiers owners and victuallers aforesd to be Deuided by ye Comissioners appointed for Prize (whose names are Registered in this Court in manner and forme as usuall, and Doth further Pronounce and Adiudge them and all and euery buyer of ye same to be ye Iust and rightfull possessors and owners of ye same to all Intents and purposes whatsoever wch I do Pronounce giue and Publish by these ~~Resents~~ Resents giuen in ye sd Court the 13th of Nouember 1662

Charles Hardres

Register

Jamaica By order of ye Honble W^m Michell Esq^r Iudge of ye Court of Admiralty in ye Island of Jamaica It was referred to these persons following as Com^{rs} (vizt) Capt. Christopher Mings Capt Epenetus Crosse Mr John Loueing Mr. Edward Pinhorne John Man Esq to heare and receiue the seuerall Clayms pretences or Allegacions of all persons Concerned in ye Late Enterprize and takeinge of ye seuen ships or Vessells this day condemned

by ye said Iudge and in Compliance to ye aforesaid order and Comand the said Com^{rs} make report as ffolloweth That Capt Christopher Mings Comander in cheife in ye aforesaid Enterprize against St Iago de Cuba doth Declare that before the setting out to sea of yee ffleete from Cagway Harbour all ye Comanders of men of Warr in Compensacion of ye Adventure of their shipps and seruices done by them in Transportacon of souldiers were promised that they should haue their proportion of ye Bulkes of Cargoes or Ladeing of all such ships as should be taken by the said ffleete ratably and proportionately to ye Tunnage of each ship by ye said Commanders sett forth to sea The maior Part concerned in ye Priuate Armament seeme satisfied wth a proportionable diuision of what shall be produced out of ye seuen Prizes as was promised as aforesaid Together wth ye great Ordinance as was brought Off: To Capt Christopher Mings John Man Esq Epenetus Crosse Esq Roberts Castelles John Loueing Edward Pinhorne and W^m Beeston merchts: or any three of them Capt Mings or John Man being one Therefore Ordered that these before named persons or any three of them whereof Capt. Christopher Mings or John Man being one shall exactly veiwe all and Euery ye said Vessells Condemned as Prize and shall Take a true and perfect Inventory of all Tacklings Gunnes and other materialls as alsoe of all goodes

and merchandize laden in them or any of them and according to their skill and Iudgmt shall value and appraize ye same or referre the same to a Price to be sold by ye Candle for ye benefitt of his maty and ye persons concerned all wayes reseruing in their Account and value of ye same the Tenths due to his royall Highnesse ye Lord High Admirall out of them any or euery of them first to be sett apart and the said Com^{rs} or any three of them whereof Capt Mings or John Man to be one are to receiue claymes heare Testimonies and apporcons parts and shares as they shall in their Iudgm^{ts} and Consciences Think meete and in all these matters make full report thereof to this Court.

Jamaica By ye Com^{rs} appointed by ye Court of Admiralty for ye Prizes brought from St Iago de Cuba,

In persuance of ye Instruccions given us from ye Court of Admiralty We haue Taken Inventories of ye Seuen Prizes Condemned in ye sd Court and returned them Into Court whereupon ye sd Prizes were put to sale by ye Candle and sold as Followeth (under these names) (vizt) To ye Hon^{ble} W^m Michell a Pinke called ye Virgin sold for one Hundred ffifty and ffine pounds sterling to Capt Adrian Van Deimen als Swart one Vessell

Called ye Adventure for ffity two pounds sterling To John Weauer
one Vessell called ye Cuba for Eighty one Pounds tenn shillings
sterling To Richard Richardson gent^s one small Vessell Called
ye Three Brothers for thirty nine pounds sterling to Capt W^m
James one Vessell called ye Waterhound for ffifty pounds
to Cap^t Xpofer Mings a small Barke called ye Suift of Tenn
Tonnes for fifteene pounds; To Robert Avis a small Barke
the Recouery wch being in ye Harbo^r of St Iago de Cuba and
not to be recouered wthout great charges and Trouble at ye
Earnest suite of ye said Avis to ye Comander in cheife
Capt Mings was giuen him if he could recouer her and bring her
away wch he Did through a great Deale of Labor and charge

Out of ye Adventure Prize we haue Landed 44 chests
panell white
sugar - 34 - 10 - and for priuate account as plunder taken
off shoare of wch they are to make prooffe Twenty eight chests

Out of ye Waterhound Prize is Landed by ye
Informacion of Liut^t Coll^o Lynch one hundred and Tenn chests
of suger whereof for ye Publick account sixty Three chests
and fforty seuen so belong to priuate persons as plunder off
ye shore; all wch are to be sorted and proofes made of ye
claymes:

In ye Virgin Prize are said to be Twenty Eight
chests of sugar for ye Publique accompt parte Landed the rest

on board:

All ye Publique Sugars are sold to sundry persons at
fforty shillings per chest Panells; and ye white sugars at
ye Three pounds sterling per chest:

The Copper Gunns brought from St Iago de Cuba as
Plunder taken off ye Shore by Seamen and souldiers we desire
may be put to sale to rayse money for Defraying ye necessary
Charges of this businesse: Cagway 13 November 1662:
Christopher Mings: John Man: E Crosse: Rob^t Castell
Edward Pinhorne:

Upon report made before me this Day by Capt Mings
John Man Esq^r and others Com^{rs} appointed by this Court ye
valew and rates of ye Vessells as they were sold by ye
Candle and ye Prices of ye sugars in their sorts alsoe Expressed
but the Quantity thereof not yett fully knowne I doe
thereupon Order that they fully Informe themselves of ye
Quantities of ye said sugars and for ye monneys raysed thereon
and of ye vessells sold and that ye moneys be forthwith payd
into ye hands of John Man Esq^r to be by him pay over to whom
of right it doth appertaine according to ye Proportions and
shares of all Iustly claiming or haueing any Interest therein
as shall be reported to this Court by ye Com^{rs} aforesd.

Jamaica 28th November

1662

By report made under ye Hands of Capt Xpofer Mings
John Man Esq' John Loueing Robt Castells & Edward Pinhorpe
Merchts of ye clere produce of six small shippes or Barkes and
one Hundred Thirty and Two chests of sugar taken Prize at
St Iago de Cuba by ye ffleete under Comand of Capt Xpofer Mings
and sundry Capts of Private men of warr as appeares by their
finall account ffiled in ye C^{rt} of Admlty (vizt):

The six shippes or Barkes sold by ye Candle

Inprimis ye Aduenture	052		
The Virgin Pink	155		
The Cuba	081	-	10
The Three Brothers: als Marston Moore	039		
The Watterhound	050		
The Shallop	015	1.	s. d.
		392	- 10-00

One hundred and thirty two chests of sugar)
whereof 98 chests of Pannell sold to Sundry)
persons at fforty shillings per chest and 34)
chests of white sugar sold at 3¹/₂ per amount)
to £ : 298 whereof six pounds was abated for)
Damaged Sugars)

292 - 00-00

More sold 103 small Jarrs of malassus at 2 - 6

012 - 17-06

Receiued of one May by order of Court for goods)
by him Embezled out of ye Prize)

032 - 00-00

The whole produce - 729 - 07-06

The Tenths hereof deducted)	1	s	d
for ye Ld High Admirall)	72	- 18	- 06

Paid S ^r Charles Lyttelton)			
for ye Kings share for his)	200	- 00	- 00
ffrigatt Centurion, ffif-)			
teenths included)			

The share of ye Griffin			
ffrigatt	- 105	- 04	- 06

And accordingly the rest of ye shares were proportionably
payd over to ye residue of ye Private men of warr

Decretum Finale

Iacobus Dux Eboracensis

Latina Lingua redditum

Albaniaequae Comes Ulsterⁱ

Dominus Excelsus Admirallus

Angliae Hiberniae ac Walliae et Dominorum Insularum Eiusdem
Oppidi Calais Marchesiarum Eius Normaniae Gasgoignae et
Aqutaniae nec non Oppidi Regalis Dunkerk Dominorum Novae
Angliae Jamacae Virginiae Barbados Sancti Christopheri
Bermuda et Antego in America et Guineae Binniae et Angola in
Africa ac Tangerⁱ in Regno ffessiae etiamque omnium et
singulorum aliorum Dominiorum Domini Regis quorumcunque in
partibus Transmarinis Constabularius Dubris Dominus Gardianus
quinque Portuum et Gubernator de Portsmouth etc. Salutem
Sciatis quod Gulielmus Michell Armiger et Doctor Legem Iudex
principalis Curiae Admiralliae in Insula Iamaica stabiliter
vertute potestatis et Authoritatis deductae a delecto fideli

Thoma Domino Windeser Vice Admirallo nostro in mari Americano
ut Patet in rotulis Predictae Curiae Processis meritis et Cir-
cumstantiis cuiusdem Causae Iudicialiter Intratae et prosecutae
in predicta Curia auditis bene ponderatis et discussis pro
et ex parte Domini Regis Iure Regalis ffrigottae Centurion
In qua Navarchus est Christopher Mings Etiam in recto
Navarchorum Officialium Podalitorum et proprietatorum
diuersarum Belicarum navium Coniunctorum in Expeditione
quadam cum Regali ffrigatta Centurion Ac simul cum Causis
reprisaliorum in predicta Curia presentatis aduersas subditos
Regis. Hispaniae pro seisura et Captione Navium et Bonorum
Regis Hispaniae et subditorum in America Quando quidem bene
notum est quod Dominus noster Rex per Regales Instruccioness
suas Datas Excellencies suae Dominio Wyndeser' Domino
Gubernatore huius Insulae Iamaicae mandavit ut viis et modis
quibuscunque in fauorem Subditorum Eius obtineretur Comercium
Cum subditis Hispaniae Regis et si Gubernatores illi pro
Hispaniae Rege predicto Comercium Predictum relicerent ac
respuerent Tunc vi et Armis Procederet Quocirca tum
Gubernatori et Consilliori huius Insulae deliberatum et
Confessum esset quod Omnia Scripta propositione circa
Contractationem et Comercium cum Gubernatoribus predictis pro
Rege Hispaniae per Indias Occidentales essent rejecta Ideo
potestas et Instrucones deditae fuerunt predicto Christopher

Mings ut primas obtineret et preesses in predicta Expeditione communiter suscripta ut in Curia tunc patuit et nunc recordatum est, una cum Testimoniis et Evidenciis Testium tunc Iuratorum et narratione et Informatione predicti Christopher' Mings et aliorum Quae singula effecerunt ut istam Iudicium et Cognitionem Curiae principalis Admiraltatis ducerentur; Et Omnibus personis quibuscunque habentibus pretentionem Titulum aut Interesse quodcunque in septem nauibus aut Illarum aliquibus aut in bonis mercantiis et mercibus illarum captis in Portu Sancti Jacobi de Cuba publice monitis et Citatis (ut plane et fusius Constat in Registro Curiae eiudem et post diuersas alias Citationes et monitiones publice Factas nomine Comparente in manifestum et Trium Defalcarum Contemptus reatum Incurrentibus: Id circo Curia secundum Contenta predicti Decreti processit; Et Defaultis et Centum¹ predictis legaliter accusatis pronunciatis et Recordatis, et Allegationibus probationibus et Instrumentis illic factis Exhibitis et prolati ex parte Domini nostri Regis et aliarum privatarum Bellicarum navium Iudicialiter admissis Constitit quod predictae septem Naues (quorum vera nomina sunt Ignota) cum illarum apparatu et appurtenenciis simul cum bonis et mercibus quibuscunque in illis Captis et [^]ut supra[^] seisisit ad tempus captionis et seisurae predictae spretarent et appertenerent ad subditos Regis Hispaniae predicti et quod Captae et subductae

1. Probably Contumaciis.

fuerunt ex Portu Sancti Jacobi de Cuba virtute et Authoritate
Instruconum et Potestatis in predictum Christopherum Mings
in predicta Expeditione collata His de Causis predictus
Gulielmus Michell Armiger ex Iudex Eisdem Curiae Admiraltatis
predictae plene et mature Considerans atque perpendens totum
processum naturam et meritam Causae predictae et probationes
Informationes et Allegationes tunc factas et oblatas
Pronunciavi et Decreuit et Sententiam et Iudicium finale de
quod predictae septem naues (quorum Vera nomina sunt Ignota)
illarum apparatus cum pertinenciis bona et mercantiae in illis
aut in qualibet illarum Captae Quo Tempore Captionis erant
spectabant et Pertinebant ad Subditos Regis Hispaniae et
Secundum Ius Belli rite inceptae erant et quod Equum Esset
ut Eaedem Adiudicaretur in usum Domini Regis Iure predictae
ffrigottae Centurion Capitani Adriani Vandewen alias Swan
Capitani Georgii Brimacom Capitani Roberti Searle Capitani
Johannis Perdue Capitani Johannis Bull et Officialium Nauti
militum proprietorum et eorum qui simolas Contulerunt tum
Unius Decimis ex illis et Omnibus Partibus illarum quibuscumque
primo (ut Hic Specialiter adiudicatur) deductis et Solutis
usum Celcitudinis suae Domini Supremi Admiralli Diuidendis
ad usum Domini nostris Regis pro et Iure predictae ffrigottae
Centurion et quod Deinde super esset Diuideretur Capitaneo

Officiales nautas milites proprietores et qui symbolas
Contulerunt per Comissionares ob Prizas Constitutos (quorum
nomina in Curia predicta sunt Consignata) moda et forma solito
Eademque ita adiudicata fuerunt ut predicti et Eorum
assignati et Si qui alii Premissorum Emptores Ex Equo et bona
propriarii Tencerentur ad omnes Intentiones quascunque
Qua singula prefatus Iudex publice et pro Curia pronunciauit
13^{mo} die Nouembris 1662 Anno decimo - quarto Regni Domini
nostri Caroli Secundi Dei Gracia Angliae scotiae ffranciae
et Hiberniae Regis ffidei Defensoris etc

Intrat per

Carolus Hardres

Register.

Authoritate' Honorabilis viri D.D.Gulielmi Michell
in Matis suae Curia principali Admiraltatis Jamaicae
Constitutae Iudicis.

Quandoquidem in Exquendo Decreto huic Anexo et
Exemplificato septem nauigia quorum mihi mentio facta Est
publice fuerint venum Exposita Sub accensa Candela coram
Commissionariis ad Inquirendum super Prizos et quandoquidem
navis quae nunc Antonii nomine appellatur Cum toto suo
apparatu navali in eo numero fuerit atque ita publice Empta
a Capitanio Adriano Swart et Roberto Jordan et in Eorum aut

assignatorum possessionem Tradita representatis
atque persolutis pecuniis Debitis prout est Registro
publico consignatum: Ista omnia cum Ita sint Ego
Cunctis et singulis ad quorum manus hoc perventurum
Est et Quovismodo attinebit hoc Chirographo meo
significo et satisfactum volo quod praefatus
Adrianus Swart et Robertus Jordan vi et potestate
Decreti predicti sunt justis et Idonij Emptores
possessores et proprietarii navigii predicti In
Cuius rei plenius Testimonium feci Ego ut
publicum Sigillum principalem Curiae Admiraltatis
magistratis suae huic Chirographo affigeretur
Datum sub manu mea 13^{ra} Decembris 14^{to}: anno
serenissimi nostri Domini Caroli 8^{di} Dei
Gratiae Angliae Scotiae Franciae et Hiberniae
Regis fidei Defensoris et Domini Jamaicae

Gulielmus Michell.

Jamaica

By the Hon^{ble} W^m Michell Esq Iudge of his Maties
Principall Court of Admiralty here Established.

Where as in persuance of ye Decree hereunto annexed and
exemplified the seuen Vessells therein mencioned were
Exposed to open and publick sale by the Candle before ye
Commissioners appointed for Prizes and that the ship now
called the Three Brothers wth her tackle and furniture being
one of them was then bought by M^r Richard Richardson M^r Edward
Pinhorne and M^r W^m Beeston merch^{ts} and now in their possession
who haue Justly payd for ye Same as appeares upon record in ye
Registry of ye said Court These are therefore to Certify all
and Singuler whom these present doth or may Concerne that
ye said Richard Richardson Edward Pinhorne and Wm Beeston by
force and vertue of ye said Decree are Lawfull and rightfully
Purchasers possessors and Proprietors of ye said Vessell In
Testimony whereof I haue Caused the Publick Seale of his Maties
Principall Court of Admiralty to be affixed hereunto Giuen under
my hand this Thirteenth day of December in ye 14^r yeare of ye
raigne of our Soueraine Lord Charles ye second by the Grace of
God of England Scottland ffrance and Ireland King Defender of
ye ffayth etc & Lord of Jamaica.

Wm Michell

This certificat abouewritten was Annexed to an
Exemplification of ye English decree under ye Seale of
Admiralty and giuen to ye Persons aboue mencioned for ye Shipp
therein specified the day and yeare abouesd

The same was also giuen to John Weaver for ye shippe
Called ye Cuba the Day and yeare aforesd

Entred by Ord^r

Charles Hardre

Register

A P P E N D I X IV (Continued)

C.O.155/1, pp.286, 287.

To The Gent: of ye Councill & Assembly att Nevis,
Antigua By his Excellency Christopher Codring~~ton~~ Esq^r Capt Generall
& Commander in Cheife in and ouer theire Majesties Leeward
Islands in America & Vice Admirall of the Same These are in
Theire Majts Name to Authorize & Impower Coll Samuel Gardner
Theire Majts Lt Governor of the Island of Nevis to Call to
his Assistance Such of ye Councill of ye said Island as he
shall Think fitt & to sitt and be a Court of Admiralty to Try
Sentence & Condemne a Certaine french Ketch taken by ye Shipp
Woolfe Now in ye sd Island of Nevis upon proof made to him
in Open Court of ye Same which Sentence and Condemnation
shall be in all respects as Authentick & good as if done be-
fore my Selfe & Councill and of wch all Theire Majts Officers
Concerned in ye Admiralty are to Take Notice Giuen Under my
hand & Seale at Armes in Antigua This Twelfth day of Aprill
1694 & in ye Sixth yeere of Theire Majts Reigne

Chr Codrington

Neuis

Att a Court of Admiralty held at ye Pub: Court Hall
in Charles Towne This 17th day of Aprill 1694 by Virtue of
his Exclys Comission as Aboue.

Present

The Honble Coll Samll Gardner Lt Governor etc

Coll Michll Smith) Major Danll Smith)
Major Wm Eurt) Capt Jno Sinargin)

John Perrie Esqr one of Theire Majts Comissionars for ye Prize
Office wthin ye Leeward Islands and Advocate for ye time
being Sheweth to This Honble Courtyt theire Majts Navall
fforces under ye command of Capt. Geo. Puruis in ye Ship Woolfe
in or aboute ye first day of This Instant Aprill in or Near
ye Lattitude of Sixteen Degrees Northerne Lattitude did take
as Lawfull Prize & purchase from the Subjects of ye french
King then & still being Enemies to their present Majts one
Small Ketch called ye Katherine of Martineco wth her Loading
furniture and Apparrall wch sd Ketch wth her Loading tackle
& furniture is now in ye possession of ye sd Geo: Puruis in ye
roade of Chas. Towne in this Island & before ye sd Takeinge
was wth all & Singular ye appurtenences Loading goods &
Merchandizes on board her ye Subjects of ye sd ffrench King
Wherefore ye sd Commissioner & Advocate prays this Court yt
ye Premisses may be Adjudged Sentenced & Condemned to be a
Lawfull Prize and purchase of Warr According to ye Law of
Nations and ye Custome & usage of Warr Jno Perrie

Upon The Confession of Victor Olier master and
Symon ffaux one of ye mariners on board & Comanding ye Sd
Ketch Katherene giuen in Open Court yt they were Subjects of
ye french King and yt ye Sd Ketch was before she was Taken
wth all her Lading ye goods and Merchandize of ye Subjects of
ye ffrench King and bound from Bordeaux to Martineco when they
were Taken by ye King's Navall fforce under ye Comand of Ltt
Charles Carter Ltt to Capt. Geo. Puruis in ye pinnace of
Sd Puruis & in Sight of ye Ship Woolfe, this Courte doth
Sentence & Condemne ye Sd Prize Ketch Katherene wth all her
Tackle Loading Goods and Merchandize as Lawfull Prize and
purchase of Warr.

Saill Gardner.

APPENDIX IV contd.

Bodleian Library, Rawlinson B 383.

f. 397

Province of New York.

Att a Courte of Admiralty held
att the Citty Hall of ye: Citty
of New Yorke on Munday the Sec-
ond day of November 1696. before
William Pinhome Esqr. Judge of
ye: sd Courte

Courte opened

Capt. John Evans who

as well &c

Ver

Ship Sarah and Ellinor

for an eighth part thereof as Salvage)

Information Read

Capt. Thomas Wenhom

Mr Robt. Lurting Mr. John Morris & Capt. Jeremiah Tothill
being persons appointed by his Excellency to take Care
of ye: said Ship & Loading desired they may be Admitted
Defendts, & pray ye: Courte will assign them Council.

Att Courte of Admiralty held att
the Citty Hall of ye: Citty of
New Yorke on Tuesday ye 3d day of
November 1696 before William Pin-

Province of New Yorke) home Esqr. Judge of the Said
Court

Courte Opened

Capt John Evans &c. }

Ver }

Information Read

Ship Sarah and Elinor }

Signed The Reverend Mr. James Burtell Sworne truely and faith-
Associa- fully to Interpret ye: Evidence that shall be Sworne
tionk Cath in the Said Information Exhibited Agt: ye: Said Ship
Hall ye: Sarah and Ellinor for ye: Salvage thereof:
1696

F. 397v.

Evidence of Capt. Evens.

Rene Semarte Aged twenty Seauen years of Religion A
Roman Catholick, of Birth of Blois in France being
Sworne saith as is Delivered by ye: Interpreter Sworne
Que. When & Where ye: French tooke ye: Ellinor & Sarah
he Answers in ye: Month of July last in ye: Gulph be-
tween the Cape Florida & ye; Havana
Que how Many French were put on board ye: said Ship
The Depont. Answers Nine. & five English men A Woman &
A Child left on board¹⁾

Que. how many French Ships of Warr were att ye: taking
of the said Ship. Answer that She was taken by a Ship
Called the Maillard that he ye: Depont was purser of

1) Possibly spelt boord throughout. O and A cannot
be distinguished.

the said Ship & that there were two Ships of Warr more in Sight

Que. How long itt was from ye: Caption of ye: said Ship Sarah and Ellinor till he Arrived on this Coast

Ans. About five or six weeks.

Que Was ye said Ship all that time in the Possession of ye: French

The Depont says yes

Que Who was Commander of ye: Ship that tooke ye: Ship Sarah and Ellinor

Ans Chevalier Chavinas

Que Whether ye: Depont was put on board the said Ship Sarah and Ellinor by ye: Commander of the said French Ship

Ans he was

Que Where the Depont was to carry her

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Ans That ye: day After ye: said Vessell was taken the Deponent had Orders to Carry ye: said Ship into A Bay Called St. Luce Upon ye: Island of Cuba & to putt ye: goods on board the best Ships & to burn the Rest, but that they were drawn through

the Gulph by the Currant Agt. their Wills

Que Whether he Remained Commander of the said Ship Sarah & Ellinor from the time that he was putt on board by Monsieur Chavinas till the time that ye: Pinnace of the Richmond Came on board the said Ship or whether he had Ever before put ye: English in Possession of the Same

The Depont saith that Neither he Nor any Under his Command did ever Deliver itt or that Ever he had an Intention Doe to doe

Que Where itt was he kept his possession or whether he did itt in the Great Cabbin & where ye: Arms were that were on board ye: Ship

he Answered he was in Possession of ye: great Cabbin that the Arms were in the Great Cabbin & in the little Cabbin where he lay

Que Whether there were Any Other arms on board the said Ship

Ans Not that he saw

Que Whether he saw Any French Caper in ye said Voyage & whether they would Aske Any of them

Ans They saw None but A Sloop & that they could not Speak

5

with her, & Another that Afterwards they tooke a Pilott from
f 398v

Que Whether he believed they were strong Enough to Master
The English on board in Case they had seen a French Privateer
After they had taken the said Pilote on board

Ans he would have Endeavoured itt & believes they were
Strong Enough

Que Whether if they would have Resisted the Ship after being
in the hooke if they could; if the Man of Warr had not been
there

Ans They would

Que Whether During ye: time he was on board the English
Ever Pretended to take Any Arms or to take any Possession of
the said Ship from him but did Unite with him to putt into
A Harbour for their Common Safety.

Ans: That they Never did Endeavour itt but did Joyn with
them to bring the Ship into A harbour for ye: Safety of their
lives.

Que Whether they did not Design (if they Came into Any har-
bour of an English Government) to Apply to the Government
there and Capitulate upon Terms.

6
Ans: They Designed to Submitt to the Government.

Cross Interrogateries Asked by ye Persons that Appear in Defence of the Ship (Vizt.)

Que Whether After they Came thorough the Gulph, and After ye: Sterne had lost their Pilote whether they did not Submitt themselves to the English & Desire them to Carry them to some Porte

f 399

He Answers No that is false, and that the English had as much Need of ye: French as the French of ye: English

Que When they had ye: English Pilote on board where were they bound

Ans: The English Pilote Said he would Carry them to Pensilvania but Afterwards told them he was better Acquainted with the Coast of New Yorke & therefore brought the ship in

Que Att whose Instance the said Pilote Came on board and who should Give him the Praemium for ye: Pilotsage of the Ship A Frenchman or An Englishman

Ans he sent the Shallop on board but that he made No Bargaine for a Reward Nor Knows of Any Bargaine that was made

Que What was his Orders to those he Sent on board the Said Sloop

Ans he sent three french men & two English men, that one of ye: Frenchmen he sent Could speake English & that he Sent them for a Pilote, which man Remained on board the Sloop instead of ye: Pilote

Que Who itt was that Steared ye Boate on board the said Sloop

Ans there was No body did steer but that four men Rowed.

Que how Many men were in the boate when they went for the Pilote,

Ans: five, two Englishmen and three french men

Que That after ye: said Storme & the Ship was Disabled & the Pilote Dead if they did not apprehend themselves to be upon ye English Coast, & what they Designed to doe with the said Ship

f399v

Ans: That After they were Disabled they Apprehended themselves to be upon the Coast of Florida where they were Afraid to land for fear of the Indians the English on board telling them they should loose their lives upon which they halled to the Northward upon the Coast of Virginia and Intended to make the first harbour to Saue their lives

Que Whether the Depont: Knows Randolph Stockdon

Ans: he knows him he was Cooke on board.

Que. Whether the Depont: did not Deliver a Cutlass to the
Said Randolph Stockdon

Ans: he does not Remember att Any time he Deliverd Any

Que Whether att Any time he or Any other of ye: French on
board did not Deliver A Cutlass to Any of the English on
board the said Ship

Ans: Not that he Knows off but one man that he thinks was
the Cooper tooke up a Cutlass that he Asked what he would
doe with itt, that the Man Answered he would Clean itt to
wear by his Side when he went Ashore.

Que Whether he does not Know one Thomas Frognell

Ans: Yes

Que Whether he does not Know one Daniell Geraud on board
the said Ship

Ans: Yes

Que What Course the Ship did Stear when they saw the first
Sloop

Ans he does not Remember

f400 Que Under what Colours the Ship was when the Pinnace of
the Richmond Came on board

Ans: English Colours.

Que: by whose Command the said Colours were putt out

Ans: by his Commande

-P Plaintiff

Que: Whether att the time when they Come near the Hooke &
Saw the Pennant of ye: Man of Warr flying, what the
English aboard said to him

Ans: he does not Know

A P P E N D I X V.

H.C.A. Vice-Admiralty Proceedings, 59.

ff.32, 33. Pegg v. Gutch. "This day Complt being made by Capt. Abraham Pegg agt one Edward Gutch & others that he had mated himselfe wth the said Gutch for ye whole time of Expedition to Campeche & yt ye sd Gutch had gott diuerse goods as Plunder but refused to giue unto ye sd Pegg his Share & proportion therein ye said Gutch by William Porter his Procter alladging that the said Mateshipp att the Instance and request of ye sd Pegg was quitted & brocken off by Consent before their arriuall att Campeche & haueing Proved ye said Allegation by two wittnesses in this behalfe Sworne & Examined ye Court Ordered and Decreed yt ye sd Pegg should not be taken, or deemed as Mate to ye said Gutch & others Company nor receiue any benyfitt or Advantage of ye sd Plunder but yt ye sd Gutch & rest of Mates doe accordingly proceed to deuision.

A P P E N D I X V (Continued)

f. 34. 2nd May 1663. Att Point Cagua.

"Gilbert vs Drew.

Upon Complainte made this Day by James Gilbert
Commander of the Pinck against one Drew one of his Shipps
company for that the said Drew in a Late Voyage for Salt att
Diverse tymes absented himselfe from the Labour of the
shipp, the premises being proved the Court Ordered the said
Drew in paine of Such his neglect to pay tenn shillings to
the said Gilbert in Damage."

A P P E N D I X V (Continued)

ff.34v., 35.

Court of Admiralty May ye 9th Cagua 1663.

Marriners & Seamen v Shipp Betty.

Which Day Came John Men Esq by Samuell Long his Proctor and Exhibited his Libell in behalfe of the Officers Marriners and Seamen of the Shipp Betty for their Wages due to them and oweing, Whereupon the Court Considering the premisses It was Ordered and Decreed that unless Speedy Sattisfaccion be made for the Wages aforesaid that the Shipp Betty her Tackle and Furniture should be Disposed of for the payment aforesaid.

Yates v. Popham & Fackman

Uppon Petition of Stephen Yates he complaineth of Elizabeth Popham and Jacob Fackman pt Owners of the Shipp Cagway wherein the sd Yates Sett forth that he sold to the said Popham and Fackman three parts of the said Shipp Cagway into foure parts to be divided Detaineing to himselfe the said fowreth part. Notwthstanding which agreement the said Popham & Fackman Devided the premisses and refused to account wth the said Yates for the sd fowreth part of the sd Shipp Alledging yt the said Yates had noe Share, nor proporeion in the said shipp Whereupon the said Yates produced and Swore Severall wittnesses to prove his property in the said Quarter part of the said shipp Cagway whereupon the Court being sattisfied of the Equity and Merritts of the Cause Ordered and Decreed that the said

Stephen Yates should receive a Quarter part of the profit,
and pay a Quarter part of the Charges of the said shipp Cagway,
and that he be deemed and taken & judged as Quarter Owner
of the same to all intents and purposes whatsoever."

A P P E N D I X VI.

C.O. 155/1, p.57.

At a Court of Admiralty held at the Old Road the 10th day of June 1686 before the honorable Collo Thomas Hill Governour and Deputy Vice Admiral

Lt Coll Roger Elrington

Capt Jno Rodeney

Major Jos Crispo

Capt Wm Willett

A Libell was exhibited agt a Certaine Sloop called the Richard and John as follows vizt
St Christophers

Usher Lt to Capt Santillo Commander of his Majesties Shipp the Dartmouth gives this honorable Court to understand and bee Informed that Comeing into the Old Road in this Island found a Certaine Sloop Rideing at Anchor and upon Examination not finding her Qualified according to the Acts of Trade and Navigation made seizure thereof she being a ffrench Bottom and the Master of her being a Scotchman whereby she becomes forfeited to his Majties this Informant therefore craves Due Process agt the said Sloop and Judgement as in and by the said Acts is directed and Required.

Whereupon it appeareing that said Sloop being a
ffrench Bottom It was adjudged she is Condemnable and she is
therefore Condemned to bee disposed as in and by the said
Acts of Trade is directed and Required vizt one third to
the use of his Matie one third to the Governour and the
other Third to the Informer

At a meeting the 5th of August 1686

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2. The Admiralty, Secretary's Department.

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Libels, 79, 90, 91.

Interrogatories, 11.

These files contain proceedings before the High Court of Admiralty.

Acts, 1 and 2.

This file contains the appointments of Viscount Lisle and the Duke of Norfolk as vice-Admirals for the young Duke of Richmond.

Letters of Marque, Bonds 1.

This bundle contains the oldest existing instructions issued to vice-admirals.

Examinations, Instance and Prize, I.

This volume consists of the proceedings of the first English vice-admiralty court, Norfolk and Suffolk, 1536.

Vice-Admiralty Proceedings, 59.

This volume deals chiefly with the Jamaican court, 1662-1664, but contains also precedents of common law and probate practice. It also contains the proclamation regulating the English Admiralty Court in Brittany.

Vice-Admiralty Proceedings, 104.

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